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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 184

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

JOHN J. WATTS

No. 185

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

HUGH C. SICARD

No. 186

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

PARKER SLOANE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 27, 1935

CERTIORARI GRANTED OCTOBER 14, 1935

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 184

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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1 Before United States Board of Tax Appeals

Docket No. 44061

JOHN J. WATTS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For petitioner, John F. McCabe, Esq., John J. Heberle, Esq., James P. Quigley, Esq.; for respondent, W. E. Davis, Esq., Paul Waring, Esq., Harold Allen, Esq.
Transferred to Mr. Van Fossan 7/21/33.

1929

May 4—Petition received and filed (4). Taxpayer notified. (Fee paid.)
" 6—Copy of petition served on General Counsel.
June 26—Answer and notice to produce filed by General Counsel.
" 28—Copy of answer served on taxpayer—assigned General Calendar.

1931

Nov. 19—Hearing set Feb. 2, 1932.

1932

Jan. 18—Motion to place on Reserve calendar filed by taxpayer. January 19, 1932, granted—continued to April 4, 1932.
" 28—Motion to consolidate with 47451 and 47973 filed by General Counsel. February 6, 1932, granted and continued to April 19, 1932.
2 Feb. 5—Reply to motion to consolidate filed by taxpayer.
Apr. 19—Hearing had before Van Fossan (9) on merits. Submitted. Briefs due in days.
May 30—Motion for extension to August 8, 1932, to file brief filed by taxpayer. May 31, 1932, granted.
June 10—Transcript of hearing April 19, 1932, filed.
July 30—Brief filed by taxpayer.
Aug. 1—Motion for extension of time to August 16, 1932, for brief filed by General Counsel. August 3, 1932, granted.
" 15—Motion for extension of time to September 1, 1932, for brief filed by General Counsel. August 16, 1932, granted.
" 30—Brief filed by General Counsel.

1933

Aug. 11—Findings of fact and opinion rendered—E. H. Van Fossan, Division 9. Decision will be entered under Rule 50.
" 21—Motion for review of Division Report with brief in support filed by taxpayer.
" 23—Order directing that proceedings be reviewed by the Board entered.

1933

Oct. 17—Order that report and determination be affirmed entered.
" 26—Notice of settlement filed by General Counsel.
" 28—Hearing set November 15, 1933, under Rule 50.
Nov. 15—Hearing had before Mr. E. H. Van Fossan, Division 9, on settlement—Rule 50. Amended recomputation of respondent to be filed in 30 days.
3 Nov. 18—Order that within 30 days a revised recomputation of tax be filed entered.
Dec. 18—Notice of settlement filed by General Counsel.
" 22—Hearing set January 10, 1934, under Rule 50.

1934

Jan. 9—Consent to settlement filed by taxpayer.
" 13—Decision entered—Ernest H. Van Fossan, Division 9.
Feb. 7—Petition for review by United States Circuit Court of Appeal, Second Circuit, with assignments of error filed by taxpayer.
" 7—Proof of service filed by taxpayer.
Mar. 29—Motion for extension to April 20, 1934, to complete record filed by taxpayer.
" 29—Order enlarging time to April 20, 1934, for preparation of evidence and transmission and delivery of record sur petition for review entered.
Apr. 18—Motion for extension to May 30, 1934, to complete record filed by taxpayer.
" 18—Order enlarging time to May 30, 1934, to prepare evidence and transmit record sur petition for review entered.
May 18—Agreed statement of evidence lodged.
" 18—Agreed praecipe filed.
" 21—Agreed statement of evidence approved and ordered filed.
" 30—Order enlarging time to July 14, 1934, for transmission and delivery of record entered.

4 Before U. S. Board of Tax Appeals.

Docket No. 47451

HUGH C. SICARD, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For petitioner, James P. Quigley, Esq., John F. McCabe, Esq., John J. Heberle, Esq., Robert J. Heberle, Esq.; For respondent, W. E. Davis, Esq., Paul Waring, Esq., Harold Allen, Esq.

Transferred to Mr. Van Fossan 7/21/33.

1930

Feb. 11—Petition received and filed. Taxpayer notified. (Fee paid.)

" 12—Copy of petition served on General Counsel.

Mar. 31—Answer filed by General Counsel.

Apr. 2—Copy of answer served on taxpayer—General Calendar.

1931

Jan. 18—Notice of appearance of James P. Quigley as counsel for taxpayer, filed.

1932

Jan. 20—Hearing set April 4, 1932.

" 28—Motion to consolidate with 44061 and 47973 for hearing filed by General Counsel. February 6, 1932, granted and continued to April 19, 1932.

5 Feb. 5—Reply to motion to consolidate filed by taxpayer. See 44061.

Apr. 19—Hearing had before Mr. Van Fossan on merits. Submitted. Briefs due in 60 days.

May 30—Motion for extension to August 1, 1932, to file brief filed by taxpayer. May 31, 1932, granted.

June 10—Transcript of hearing April 19, 1932, filed.

July 29—Brief filed by taxpayer.

Aug. 1—Motion for extension of time to August 16, 1932, for brief filed by General Counsel. August 3, 1932, granted.

" 15—Motion for extension of time to September 1, 1932, for brief filed by General Counsel. August 16, 1932, granted.

" 30—Brief filed by General Counsel.

1933

Aug. 11—Findings of fact and opinion rendered—Ernest H. Van Fossan, Division 9. Decision will be entered under Rule 50.

" 21—Motion for review of Division Report with brief in support filed by taxpayer.

" 23—Order that report of Division 9 dated July 26, 1933, and promulgated August 11, 1934, be reviewed by the Board entered.

Oct. 17—Order that report and determination be affirmed entered.

" 26—Notice of settlement filed by General Counsel.

" 28—Hearing set November 15, 1933, on settlement.

6 Nov. 15—Hearing had before Mr. Van Fossan on settlement under Rule 50. Amended recomputation to be filed by respondent in 30 days.

" 20—Order that within 30 days a revised or complete recomputation of tax be filed entered.

Dec. 18—Notice of settlement filed by General Counsel.

" 21—Hearing set January 10, 1934, on settlement.

1934
Jan. 8—Consent to settlement filed by taxpayer.
" 15—Decision entered—Ernest H. Van Fossan, Division 9.
" 29—Notice of the appearance of Robert J. Heberle as associate counsel for taxpayer filed.
Feb. 7—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
" 7—Proof of service filed by taxpayer.
Mar. 29—Motion for extension to April 20, 1934, to complete record filed by taxpayer.
" 29—Order enlarging time to April 20, 1934, for preparation of evidence and delivery of record entered.
Apr. 18—Motion for extension to May 30, 1934, to complete record filed by taxpayer.
" 18—Order enlarging time to May 30, 1934, to complete record entered.
May 18—Agreed statement of evidence lodged.
" 18—Agreed praecipe filed.
7 May 21—Agreed statement of evidence approved and ordered filed.
" 30—Order enlarging time to July 14, 1934, for transmission and delivery of record entered.

Before U. S. Board of Tax Appeals

Docket No. 47973

PARKER SLOANE, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For petitioner, James P. Quigley, Esq., John F. McCabe, Esq., John J. Heberle, Esq., Robert J. Heberle, Esq; for respondent, W. E. Davis, Esq., Paul Waring, Esq., Harold Allen, Esq.

Transferred to Mr. Van Fossan 7/21/33.

1930
Mar. 25—Petition received and filed. Taxpayer notified. (Fee paid.)
" 26—Copy of petition served on General Counsel.
Apr. 25—Answer filed by General Counsel.
" 28—Copy of answer served on taxpayer—General Calendar.

8 1932
Jan. 18—Notice of appearance of James P. Quigley as counsel for taxpayer filed.
" 20—Hearing set April 4, 1932.
" 28—Motion to consolidate with 44061 and 47451 for hearing filed by General Counsel.
Feb. 5—Reply to motion to consolidate filed by taxpayer.
" 6—Motion to consolidate granted and continued to April 19, 1932.
Apr. 19—Hearing had before Mr. Van Fossan on merits. Submitted. Briefs due in 60 days.
May 30—Motion for extension to August 1, 1932, to file brief filed by taxpayer. May 31, 1932, granted.
June 10—Transcript of hearing April 19, 1932, filed.
July 29—Brief filed by taxpayer.
Aug. 1—Motion for extension of time to August 16, 1932, for brief field by General Counsel. August 3, 1932, granted.
" 15—Motion for extension of time to September 1, 1934, for brief filed by General Counsel. August 16, 1932, granted.
" 30—Brief filed by General Counsel.
1933
Aug. 11—Findings of fact and opinion rendered—Ernest H. Van Fossan, Division 9. Decision will be entered under Rule 50.
" 21—Motion for review of Division Report with brief in support filed by taxpayer.
9 Aug. 23—Order that report of Division 9, dated July 26, 1933, and promulgated August 11, 1933, be reviewed by the Board entered.
Oct. 17—Order that report and determination be affirmed entered.
" 26—Notice of settlement filed by General Counsel.
" 28—Hearing set November 15, 1933, on settlement.
Nov. 15—Hearing had before Mr. Van Fossan on settlement—30 days for Commissioner to file amended recomputation.
" 17—Order allowing 30 days to file revised or complete recomputation entered.
Dec. 18—Notice of settlement filed by General Counsel.
" 21—Hearing set January 10, 1934, on settlement.
1934
Jan. 8—Consent to settlement filed by taxpayer.
" 15—Decision entered—Ernest H. Van Fossan, Division 9.
" 29—Notice of the appearance of Robert J. Heberle as associate counsel for taxpayer filed.
Feb. 7—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
" 7—Proof of service filed by taxpayer.

1934

Mar. 29—Motion for extension to April 20, 1934, to complete record filed by taxpayer.

Mar. 29—Order enlarging time to April 20, 1934, for preparation of evidence and delivery of record entered.

Apr. 18—Motion for extension to May 30, 1934, to complete record filed by taxpayer.

" 18—Order enlarging time to May 30, 1934, to complete record entered.

May 18—Agreed statement of evidence lodged.

" 18—Agreed praecipe filed.

" 21—Agreed statement of evidence approved and ordered filed.

" 30—Order enlarging time to July 14, 1934, for transmission and delivery of record entered.

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted.]

Petition, No. 44061

Filed May 4, 1929

The above-named petitioner hereby appeals from a determination of the Commissioner of Internal Revenue, hereinafter more fully referred to, and as a basis for his petition alleges:

11 1. Your petitioner is an individual, residing at 131 Riverside Drive, New York, N. Y.

2. Your petitioner takes this appeal from a determination of the Commissioner of Internal Revenue finding a deficiency in the amount of income taxes payable by him as set forth in a letter from the Commissioner hereinafter more fully referred to.

3. On or about March 18, 1929, the Commissioner of Internal Revenue sent to your petitioner by Registered Mail a letter dated on that day and signed, " D. H. Blair, Commissioner, by C. B. Allen, Deputy Commissioner ", addressed to your petitioner at 131 Riverside Drive, New York City. The said letter advised your petitioner that the determination of his income tax liability for the year 192 disclosed a deficiency in the tax, amounting to $63,441.83, as shown in a statement attached to said letter. A copy of said letter and its accompanying Statement is annexed hereto marked "Exhibit A."

4. The tax in which the Commissioner of Internal Revenue has found the deficiency referred to herein, is the income tax imposed upon the net income of your petitioner for the taxable year 1924 and the amount of the deficiency in controversy is the entire amount of said deficiency, namely, $63,441.83.

5. The following is a statement of the assignments of error committed by the Commissioner of Internal Revenue in determining the amount of your petitioner's liability for the year 1924:

12 (a) The Commissioner of Internal Revenue erred in setting up capital gain of $507,534.65 in respect to the so-called

"sale" of stock of the United States Ferro Alloys Corporation to the Vanadium Corporation of America.

(b) The Commissioner of Internal Revenue erred in treating the transaction as a purchase of stock by the Vanadium Corporation whereas, in fact, the transaction was an exchange for stock and securities of the Vanadium Corporation under the reorganization provisions of the Revenue Act.

(c) The Commissioner of Internal Revenue erred in assuming that the amount of $338,815.50 (referred to on Page 3 of the Statement) "constituted constructive receipt to the owners of the stock disposed of", and, therefore, represented part of the purchase price to the Vanadium Corporation.

6. The facts upon which your petitioner relies are as follows:

(a) Under an agreement dated December 23, 1924, all of the stockholders of the United States Ferro Alloys Corporation, acting through a common agent, made an agreement with the Vanadium Corporation of America under the terms of which *all* of the outstanding 30,000 common shares of the United States Ferro Alloys Corporation were exchanged for the following:

13 1. Bonds of the United States Ferro Alloys Corporation in the principal amount of $1,161,184.50. The said bonds being guaranteed by Vanadium Corporation of America.

2. Common stock of the Vanadium Corporation of America amounting to 33,333⅓ shares.

Under the agreement, 33.333⅓ shares were required to be deposited "in escrow" with the Guaranty Trust Company of New York City, the "escrow" deposit to be dissolved on January 1, 1926, and the precise amount thereof then due to the exstockholders of "Ferro Alloys" to be then determined on basis of the earning power demonstrated by the "Ferro Alloys" Corporation during the year of 1925. The amount of "Vanadium" Stock so determined to be due to the exstockholders of "Ferro Alloys" Corporation on dissolution of said "escrow", was 32,103 shares.

(b) Concurrently, and under the terms of the agreement, the Vanadium Corporation of America agreed to pay past due obligations of Ferro Alloys in the amount of $338,815.50.

14 The two creditors which Vanadium Corporation of America agreed to pay were—

Louise M. Higham	$298,815.50
Niagara Power Company	40,000.00
	338,815.50

Neither this Taxpayer nor any other stockholder of the "Ferro Alloys" Corporation had any personal interest whatever in either of the said obligations or in the said creditors of the "Ferro Alloys" Corporation, but none the less the stockholders of "Ferro Alloys" had made the immediate payment of those particular liabilities of the "Ferro Alloys" Corporation, one of the major conditions under which they agreed to deliver to "Vanadium" their "Ferro Alloys"

Stock, and thereby dispossess themselves of control of the "Ferro Alloys" Corporation.

The concern of the departing stockholders in respect of having these particular (and no other) liabilities of the "Ferro Alloys" Corporation paid immediately following their relinquishment of said control, accrued from the fact that those liabilities were procured through and secured by "moral" guaranties resident in the "Ferro Alloys" Corporation's personnel, and it was determined that these particular obligations must be paid during the tenure of that personnel and not be left, as were all other liabilities, to payment in the discretion or at the convenience of the new personnel that would become their successors in the management of the "Ferro Alloys" Corporation on conclusion of the stock-exchange transaction.

The simple facts are that by imposing upon "Vanadium" the obligation to immediately pay off those creditors of "Ferro Alloys" as a condition precedent to the exchange of Stock, the stockholders of "Ferro Alloys" compelled "Vanadium" to become a creditor of the "Ferro Alloys" Corporation to the extent of $338,815.50, in place of those two creditors whom it was required to pay off and supersede. It was merely a substitution of creditors and as such it, of course, could not result in profit or loss for any participant.

(c) This Taxpayer did not, directly or indirectly, receive any part of the $338,815.50 above referred to.

(d) The Taxpayer claims that he became a participant in a "reorganization" within the meaning of the Revenue Act of 1924 and the regulations pertaining thereto, and that the transaction resulted in an exchange of his stock for Bonds issued under the reorganization agreement and guaranteed by the Vanadium Corporation, and stock of the said Vanadium Corporation.

(e) Because the Taxpayer did not receive either money or other property additional to the stock and bonds received in exchange for his stock, this Taxpayer did not incur any tax liability in 1924 in respect of the said transaction.

(f) In his tax returns of subsequent years, the Taxpayer has reported the gain arising from the sale of this stock as and when the stock has been sold by him. This method, the Taxpayer claims is in accordance with the Revenue Act and the regulations pertaining thereto.

Wherefore your petitioner prays that this Board may hear the proceedings and

1. That the determination of the Commissioner be held to have been erroneous.

2. That the entire proposed assessment be disallowed.

JOHN F. MCCABE,
Counsel for Petitioner,
Post Office Address, No. 41 Maiden Lane, New York, N. Y.

17 *Exhibit "A" to petition*

TREASURY DEPARTMENT,
Washington, March 13, 1929.

Mr. JOHN J. WATTS,
131 Riverside Drive, New York, New York.

SIR: In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the year 1924 discloses a deficiency of $63,441.83, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, if You Do Not Desire to Petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates
18 thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; Whereas, if No Agreement is Filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

D. H. BLAIR,
Commissioner.
By: C. B. ALLEN,
Deputy Commissioner.

Inclosures:
Statement.
Form 866.
Form 882.

Exhibit "A-1"

Statement

IT:AR:B-12.
RMT-60D.

MARCH 13, 1929.

In re: Mr. John J. Watts, 131 Riverside Drive, New York, New York.

Tax liability

Year 1924:	
Corrected tax liability	$66,054.46
Tax previously assessed	2,612.63
Deficiency	$63,441.83

A review of your income-tax return for the year 1924 discloses a deficiency in tax.

19 1924

Ordinary net income as corrected in revenue agent's report		$44,951.51
Add:		
1. Capital net gain	$507,534.65	
Capital net loss shown on return	10,000.00	
		497,534.65
Corrected total net income		$542,486.16
Less:		
Capital net gain	$507,534.65	
Capital net loss shown on return	10,000.00	
		497,534.65
Income subject to surtax		$44,951.51
Less:		
Dividends	$18,878.25	
Personal Exemption	2,900.00	
		21,778.25
Balance subject to normal tax		$23,173.26
Normal tax at 2% on $4,000.00		$80.00
Normal tax at 4% on $4,000.00		160.00
Normal tax at 6% on $15,173.26		910.40
Surtax on $44,951.51		2,722.73
Tax at 12½% on capital net gain of $497,534.65		62,191.83
Total tax		$66,064.96
Less:		
Earned income credit		10.50
Total tax assessable		$66,054.46
Tax previously assessed		2,612.63
Deficiency in tax		$63,441.83

20 Explanation of Changes

1. Information on file in this office indicates that you realized a capital net gain of $507,534.65 from the sale of stock of the United States Ferro Alloys Corporation to the Vanadium Corporation of America.

A computation of the method of arriving at the amount of such profit follows:

Received for total stock of United States Ferro Alloys Corporation		$2,500,000.00
1. Amount paid creditors of United States Ferro Alloys Corporation	$338,815.50	
2. Additional cost allowed	43,363.08	
3. Value of undelivered stock	36,910.00	
		419,088.58
Net sale price		$2,080,911.42
⅓ interest		$693,637.14
Cost of stock		186,102.49
Capital net gain		$507,534.65

It appears that, under the terms of the contract involving this transaction, the purchase price of the stock to the Vanadium Corporation was $2,500,000.00 made up as follows:

33,333⅓ shares of Vanadium Corporation stock at $30.00 a share	$1,000,000.00
Bonds taken as part payment	1,161,184.50
Payment to Louise M. Higham	298,815.50
Payment to Niagara Power Company	40,000.00
	$2,500,000.00

21 From information on file in this office, the amounts of $43,363.08 and $36,910.00, representing liability for taxes against the year 1924 and the value of stock not delivered under the agreement between the United States Ferro Alloys Corporation and the Vanadium Corporation, respectively, have been allowed as deductions against profit which would have been realized under the terms of the original sales agreement.

In computing the capital net gain as shown above, you are advised that this office holds that the amount of $338,815.50 paid by the Vanadium Corporation to the creditors of the United States Ferro Alloys Corporation constituted constructive receipt to the owners of the stock disposed of and, therefore, represents part of the purchase price to the Vanadium Corporation.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1924, the Bureau will be unable to afford you an opportunity under the provisions of Treasury Decision 3867 to discuss your case before mailing formal notice of its determination, as provided by Section 274(a) of the Revenue Act of 1926. It is, therefore, necessary at this time, in order to protect the interests of the Government, to issue this formal notice of deficiency.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

22 [*Duly sworn to by John J. Watts, jurat omitted in printing.*]

Before United States Board of Tax Appeals

[Title omitted.]

Answer, No. 44061

Filed June 26, 1929

The Commissioner of Internal Revenue, by his attorney,
23 C. M. CHAREST, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations of Paragraph 1.
2. Admits the allegations of Paragraph 2.
3. Admits the allegations of Paragraph 3.
4. Admits the allegations of Paragraph 4.
5. (a) Denies the error complained of in Paragraph 5 (a).
   (b) Denies the error complained of in Paragraph 5 (b).
   (c) Denies the error complained of in Paragraph 5 (c).

6. (a) As to Paragraph 6 (a), the Commissioner admits the matter set forth therein insofar as the same is supported by the terms of a written agreement dated December 23, 1924, and denies the remainder of said paragraph. (Notice is hereby served upon petitioner to produce the original of said agreement before the Board of Tax Appeals at the hearing in this proceeding.)

(b) Denies the matter set forth in Paragraph 6 (b).

(c) Denies the matter set forth in Paragraph 6 (c).

(d) Denies the matter set forth in Paragraph 6 (d).

6. (e) As to Paragraph 6 (e), the Commissioner admits taxpayer received stocks and bonds as part consideration for his stock and denies the remainder of said paragraph.

(f) Denies the matter set forth in Paragraph 6 (f).

24 Denies, generally and specifically, each and every allegation in the taxpayer's petition contained not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's petition be denied.

(Signed) C. M. CHAREST,
C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
JOHN E. MARSHALL,
Special Attorney, Bureau of Internal Revenue.
JEM CAR/csf

Before United States Board of Tax Appeals

[Title omitted.]

Petition No. 47451

Filed Feb. 11, 1930

The above-named petitioner hereby appeals for a re-determination of the deficiency set forth by the Commissioner of Internal
25 Revenue in his notice of deficiency (IT:AR:R-12—RMT-60D) dated December 14, 1929, and as a basis of these proceedings, alleges as follows:

1. The petitioner is an individual, a resident of New York City, having offices at 100 East 42nd Street, New York City.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed (dated) to the petitioner on December 14, 1929.

3. The taxes in controversy are income taxes for the calendar year 1924 in the amount of $63,441.83.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

4-a. The Commissioner has determined that Petitioner realized taxable income through sale in 1924 of 10,000 shares of the common stock of United States Ferro Alloys Corporation:

4–b. The Commissioner has determined that Petitioner realized taxable income in the amount of $507,534.65 through the sale that is alleged as stated in par. 4–a.

4–c. The Commissioner has determined a deficiency of $63,441.83 in respect of said alleged income of $507,534.65 on the theory that Petitioner is subject to tax on the last-stated amount in addition to the net income of $34,362.14 that was reported in Petitioner's 1924 return, and on which income the required tax was fully paid.

26

4–d. The Commissioner's determination is based upon information contained in a certain Revenue Agent's Report considered in connection with a certain protest filed by the Taxpayer dated December 20, 1928, and which it appears was dated not December 20, 1928, but December 19, 1928.

5. The facts upon which the Petitioner relies as the basis of this proceeding, are as follows:

5–a. That prior to December 1924 Petitioner was the owner of 10,000 shares of the common stock of United States Ferro Alloys Corporation;

5–b. That on or about December 1, 1924, an agreement was made between all of the common-stockholders of said Ferro Alloys Corporation, acting through a common agent, and the Vanadium Corporation of America, under which the former transferred to the latter all of the outstanding common stock of said Ferro Alloys Corporation, being 30,000 shares of the par value of $100 per share.

5–c. That said agreement provided as a prerequisite to said transfer that said Vanadium Corporation should pay certain indebtedness of said Ferry Alloys Corporation, and this was accomplished by Vanadium Corporation making the required payments to creditors of Ferro Alloys Corporation and by that act becoming a creditor of that corporation in their stead.

27

5–d. That said creditors were not stockholders of either corporation.

5–e. That the consideration received from Vanadium Corporation in exchange for said 30,000 shares of common stock of Ferro Alloys Corporation consisted of Bonds of the latter thereupon issued and guaranteed by the former, plus some specified but undetermined part of 33,333⅓ shares of the no par common stock of Vanadium Corporation, of which 23,333⅓ shares were delivered, and 10,000 shares were placed in escrow with the Guaranty Trust Company of New York City until January 1, 1926, when it was determined that the total shares due to Ferro Alloys Corporation's former stockholders was 32,103 shares.

5–f. That under the agreement mentioned in par. 5–b., the retiring stockholders of said Ferro Alloys Corporation were required to pay certain liabilities thereafter determined in respect of said corporation, and these were ascertained and paid in 1925, the amount then paid by this Petitioner being $16,563.02.

6. Wherefore, the Petitioner prays that this Board may hear the proceeding and find that

6-a. The said exchange of stock for stock and bonds in 1924 was a tax-free exchange under the provisions of Sec. 203 (b) (2) of the Act of 1924.

(s) HUGH C. SICARD,
HUGH C. SICARD,
100 East 42nd Street, New York City, N. Y.

[*Duly sworn to by Hugh C. Sicard, jurat omitted in printing.*]

Exhibit "A" to petition

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Dec. 14, 1929.

Address Reply to Commissioner of Internal Revenue and Refer to—

Mr. HUGH C. SICARD,
100 East 42nd Street, New York, New York.

SIR: In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the year 1924 discloses a deficiency of $63,441.83, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

However, if You Do Not Desire to Petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT: C: P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; Whereas if No Agreement is Filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

ROBERT H. LUCAS,
Commissioner,
By DAVID BURNET,
Deputy Commissioner.

Inclosures:
Statement.
Form 866.
Form 882.

Statement

IT:AR:B–12. DEC. 14, 1929.
RMT–60D.

In re: Mr. Hugh C. Sicard, 100 East 42nd Street, New York, New York.

Tax liability

Year, 1924:
Corrected tax liability, $66,457.38
Tax previously assessed, $3,015.55
Deficiency, $63,441.83
Overassessment, None.

A review of the reports of the Internal Revenue Agent in
31 Charge at New York, New York, covering your tax liability for the years 1924, 1925, 1926, and 1927, discloses the same to be correct with the exception that profit shown in the report on the sale of stock in 1924 has been decreased by $12,793.51 as the result of information submitted in your protest of December 20, 1928, which has received careful consideration in arriving at the amount of deficiency for 1924.

A computation of your corrected profit on the sale in question follows:

Sale price of stock		$2,500,000.00
Cost of sales shown	$338,815.50	
Additional cost allowed as per protest	43,363.08	
Value of undelivered stock	36,910.00	
		419,088.58
Net sale price		$2,080,911.42
⅓ interest of $2,080,911.42		$693,637.14
Cost of ⅓ interest		186,102.49
Profit to be reported		$507,534.65

1924

Net income as shown on return		$34,362.12
Add:		
1. Profit on sale of stock		507,534.65
Corrected net income		541,896.77
Less:		
Capital net gain		507,534.65
Income subject to surtax		$34,362.12
32 Less:		
Dividends	$516.75	
Personal exemption	1,000.00	
		1,516.75
Balance subject to normal tax		$32,845.37
Normal tax at 2 percent on $4,000.00		$80.00
Normal tax at 4 percent on $4,000.00		160.00
Normal tax at 6 percent on $24,845.37		1,490.72
Surtax on $34,362.12		1,350.83
Tax at 12½ percent on $507,534.65		63,441.83
Total Tax		$66,532.38
Less:		
Earned income credit		75.00
Total tax assessable		$66,457.38
Tax previously assessed		3,015.55
Deficiency in tax		$63,441.83

Explanation of Change

It is held by the Bureau that the transaction involving the capital net gain of $507,534.65 was within the provisions of Article 1573 of Regulations 65 and, accordingly, this amount has been included as taxable income to you for the year 1924.

In connection with the years 1925, 1926, and 1927, each of which indicates an overassessment as a result of the above adjustment in 1924, you are informed that you will be advised in a subsequent communication as to the result of the audit of your returns for these years.

33 Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

Inasmuch as you did not avail yourself of the privilege of requesting an extension of the statutory period for assessment by the filing of a consent, as provided for under Section 278 (c) of the Revenue Act of 1926, and of which provision you were advised under date of November 1, 1929, it is necessary at this time, in order to protect the interests of the Government, to issue this formal notice of deficiency.

A consent is on file in this office extending the statutory period of limitations for making assessment against the year 1924 to December 31, 1929.

(272M.)

NOTICE

Appeals should be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., in accordance with the rules of practice established by the Board

The United States Board of Tax Appeals is in no way connected with the Bureau of Internal Revenue or the Treasury Department. Under no circumstances should a petition on appeal be forwarded to the Commissioner or the Collector of Internal Revenue. If you decide to initiate a proceeding before the Board, your petition

34 proceedings, and proofs in the proceedings must be in accordance with the rules of practice of the Board, with Section 900 of the Revenue Act of 1924 and Section 1000 of the Revenue Act of 1926. Under the statute and the rulings of the Board a petition (together with a filing fee of $10.00) must be received and filed with the Board within sixty days from the date of mailing of the attached notice (not counting Sunday as the sixtieth day).

NOTICE

Interest at the rate of 6 per centum per annum computed as follows is due on all deficiencies in tax and will be included in notice and demand for payment.

For the years 1909 to 1920, inclusive, from February 26, 1926 (date of passage of the 1926 Act), to the date of assessment, or, in case of a waiver under Section 274(d) of the 1926 Act, to the thirtieth day after the filing of such a waiver, whichever is the earlier.

For the years 1921 to 1924, inclusive, from the date prescribed for payment (or, if the tax is paid in installments, upon the part of the deficiency prorated to each installment) to the date of assessment, or, in case of a waiver under Section 274(d) of the 1926 Act, to the thirtieth day after the filing of such a waiver, whichever is the earlier.

For 1925 and subsequent years, from the date prescribed for the payment of the first installment to the date the deficiency is
35 assessed, or, in case of a waiver under Sections 274(d) of the 1926 Act or 272(d) of the 1928 Act, to the thirtieth day after the filing of such waiver, whichever is the earlier.

The inclosed agreement when signed by you will constitute a waiver and will, if filed promptly, operate to curtail the amount of interest you will be obliged to pay since the interest period will terminate thirty days after filing, while without the waiver, assessment must be delayed sixty days from date of deficiency letter.

Agreement as to final determination of tax liability

This agreement, made in duplicate under and in pursuance of Section 606 of the Revenue Act of 1928, by and between Mr. Hugh C. Sicard, a taxpayer located at 100 East 42nd Street, New York, N. Y., and the Commissioner of Internal Revenue;

Whereas, there has been a determination of the tax liability of said taxpayer in respect of Federal Income Tax for the calendar year 1924 in the principal sum of Sixty Six Thousand Four Hundred Fifty Seven Dollars and Thirty Eight Cents ($66,457.38), exclusive of any penalty or interest properly applicable thereto as provided by law;

Now, this agreement witnesseth, that said taxpayer and said Commissioner of Internal Revenue hereby mutually agree that the
36 principal amount of such liability so determined shall be final and conclusive if this agreement is approved by the Secretary of the Treasury, or the Undersecretary, within six months from the date this agreement is signed by the taxpayer.

In witness whereof, the above parties have subscribed their names to these presents in duplicate.

Signed this ------ day of ----------, 19--

Taxpayer.

By ---

[If the taxpayer is a corporation affix its seal here.]

The above agreement has been approved by the Secretary of the Treasury, or the Undersecretary, in accordance with the provisions of Section 606 of the Revenue Act of 1928, the approval being specifically enumerated on—

Schedule No. ------
Dated----------
Signed ----------, 19--
(Date)

Commissioner of Internal Revenue.

By ---

37 Waiver of Restrictions on Assessment and Collection of Deficiency

Irrespective of the execution or approval of the foregoing instrument, the undersigned taxpayer hereby waives the restrictions provided in Section 274 (a) or 308 (a) of the Revenue Act of 1926 or Section 272 (a) of the Revenue Act of 1928 on the assessment and collection of any deficiency in tax included in the principal sum of the tax liability as set forth in the said instrument, together with any penalty or interest properly applicable thereto as provided by law.

[If the taxpayer is a corporation affix its seal here.]

---,

Taxpayer.

By ---,

(See instructions on reverse side)

To be accomplished in duplicate and both copies returned.

38 Before United States Board of Tax Appeals

[Title omitted.]

Answer, No. 47451

Filed Mar. 31, 1930

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations of Paragraph 1.
2. Admits the allegations of Paragraph 2.
3. Admits the allegations of Paragraph 3.

4-a. Denies the error complained of in Paragraph 4-a.

4-b. Denies the error complained of in Paragraph 4-b.

4-c. Denies the error complained of in Paragraph 4-c.

4-d. Denies the error complained of in Paragraph 4-d.

39 5-a to 5-f, inclusive. Denies each and every allegation contained in Paragraphs 5-a to 5-f, inclusive, which is inconsistent with or contrary to the determination of the Commissioner as set forth in deficiency letter, a copy of which is attached to the petition.

Denies, generally and specifically, each and every allegation in the taxpayer's petition contained not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's petition be denied.

(Signed) C. M. CHAREST,
C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
JOHN E. MARSHALL,
Special Attorney, Bureau of Internal Revenue.

40 Before United States Board of Tax Appeals

[Title omitted.]

Petition, No. 47973

Filed Mar. 25, 1930

The above-named petitioner hereby appeals for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:B-12—RMT-60D) dated March 17, 1930, and as a basis of these proceedings, alleges as follows:

1. The petitioner is an individual, a resident of New York City, having offices at 100 East 42nd Street, New York City.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed (dated) to the petitioner on March 17, 1930.

3. The taxes in controversy are income taxes for the calendar year 1924 in the amount of Sixty-three thousand, Four hundred forty-one dollars and Eighty-three cents ($63,441.83).

41 4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

4-a. The Commissioner has determined that Petitioner realized taxable income through an exchange which he alleges was a sale in 1924 of 10,000 shares of the Common Stock of United States Ferro Alloys Corporation.

4-b. The Commissioner has determined that Petitioner realized taxable income in the amount of $507,534.65 through the sale he alleges as stated in Par. 4-a.

4-c. The Commissioner has determined a deficiency of $63,441.83 in respect of said alleged income of $507,534.65 on the theory that Petitioner is subject to tax on the last-stated amount in addition to the net income of $29,273.50 and $12,509.37, respectively, that was reported in Petitioner's 1924 Return, and on which income the required tax was fully paid.

5. The facts upon which the Petitioner relies as the basis of this proceeding, are as follows:

5-a. That prior to December, 1924, Petitioner was the owner of 10,000 shares of the Common Stock of United States Ferro Alloys Corporation.

5-b. That on or about December 1, 1924, an agreement was
42 made between all of the Common-stockholders of said Ferro Alloys Corporation, acting through a common agent, and the Vanadium Corporation of America, in which the former agreed to transfer, and pursuant to which they eventually did transfer to the latter, all of the outstanding Common Stock of said Ferro Alloys Corporation, being 30,000 shares of the par value of $100 per share.

5-c. That said agreement provided as a prerequisite to said transfer that said Vanadium Corporation should pay certain indebtedness of said Ferro Alloys Corporation, and this prerequisite to the transfer was accomplished by Vanadium Corporation making the required payments to creditors of Ferro Alloys Corporation and by that act becoming a creditor of that corporation in their stead.

5-d. That said creditors were not stockholders of either corporation.

5-e. That the consideration received from Vanadium Corporation in exchange for said 30,000 shares of Common Stock of said Ferro Alloys Corporation consisted of Bonds of the latter thereupon issued and guaranteed by the former, plus some specified but then undetermined part of 33,333⅓ shares of the No Par Common Stock of Vanadium Corporation, of which 23,333⅓ shares were delivered, and 10,000 shares were placed in escrow with the Guaranty Trust

43 Company of New York City until January 1, 1926, when it was determined that the total shares due to Ferro Alloys Corporation's former stockholders was 32,103 shares which were thereupon distributed and the balance returned to said Vanadium Corporation.

5-f. That under the agreement mentioned in Par. 5-b, the retiring stockholders of said Ferro Alloys Corporation were required to pay, certain liabilities not then but thereafter determined in respect of said corporation, and these were ascertained and paid in 1925, the amount then paid by this Petitioner being $16,563.02.

6. Wherefore, the Petitioner prays that this Board may hear the proceeding and find that

6-a. The said exchange of Stock for Stock and Bonds in 1924 was a tax-free exchange under the provisions of Sec. 203 (b) (2) of the Act of 1924, and that there is no deficiency for 1924.

PARKER SLOANE,
100 East 42nd Street, New York City.

[*Duly sworn to by Parker Sloane, jurat omitted in printing.*]

44 *Exhibit "A" to petition*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Mar. 17, 1930.

Address reply to Commissioner of Internal Revenue and refer to—

Mr. PARKER SLOANE,
8 East 62nd Street, New York, New York.

SIR: In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the year(s) 1924 and 1925 discloses a deficiency of $63,441.83 for
45 the year 1924 and an overassessment of $33,860.05 for the year 1925 as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability for the year(s) in which a deficiency is disclosed.

However, if you do not desire to petition, you are requested to execute the inclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is

made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

ROBT. H. LUCAS,
Commissioner.
By DAVID BURNET,
Deputy Commissioner.

Inclosures:
Statement.
Form 866.
Form 882.

46 Statement

IT:AR:B–12.
RMT–60D. MAR. 17, 1930.

In re: Mr. Parker Sloane, 8 East 62nd Street, New York, New York.

Tax liability

Year	Corrected tax liability	Tax previously assessed	Deficiency	Over assessment
1924	$65,966.60	$2,524.77	$63,441.83	
1925	2,537.19	35,397.24		$33,860.05
Totals	68,503.79	38,922.01	63,441.83	33,860.05
Add amount barred by statute, 1925	33,860.05	None	None	33,860.05
Total tax liability	102,363.84	38,922.01	63,441.83	None

A review of your income-tax returns for the years 1924 and 1925 discloses a deficiency in tax for 1924 of $63,441.83 and an overassessment for 1925 of $33,860.05.

1924

Ordinary net income originally reported		$29,273.50
Capital net gain originally reported	$12,509.37	
Add: 1. Increase in capital net gain	507,534.65	
		520,044.02
Corrected total net income		$549,317.52
47 Less: Capital net gain		520,044.02
Income subject to surtax		$29,273.50
Less: Dividends	$22,841.50	
Personal exemption	1,000.00	
		23,841.50
Balance subject to normal tax		$5,432.00
Normal tax at 2% on $4,000.00		$80.00
Normal tax at 4% on $1,432.00		57.28
Surtax on $29,273.50		854.62
Tax at 12½% on capital net gain of $520,044.02		65,005.50
Total tax		$65,997.40

Less:		
Earned income credit	$20.00	
Tax paid at source	10.80	
		$30.80
Total tax assessable		$65,906.60
Tax previously assessed		2,524.77
Deficiency in tax		$63,441.83

Explanation of Changes

1. Information on file in this office indicates that you realized a capital net gain of $507,534.65 from the sale involving the stock of the United States Ferro Alloys Corporation and the Vanadium Corporation of America.

A computation of the method of arriving at the amount of such profit follows:

48	Received for total stock of United States Ferro Alloys Corporation		$2,500,000.00
Add:			
	1. Amount paid creditors of United States Ferro Alloys Corporation	$338,815.50	
	2. Additional cost allowed	43,363.08	
	3. Value of undelivered stock	36,910.00	
			419,088.58
	Net sale price		$2,080,911.42
	⅓ interest		$693,637.14
	Cost of stock		186,102.49
	Capital net gain		$507,534.65

It appears that under the terms of the contract involving this transaction the purchase price of the stock to the Vanadium Corporation was $2,500,000.00 made up as follows:

33,333⅓ shares of Vanadium Corporation stock at $30.00 per share	$1,000,000.00
Bonds taken as part payment	1,161,184.50
Payment to Louise M. Higham	298,815.50
Payment to Niagara Power Company	40,000.00
	$2,500,000.00

From information on file in this office the amounts of $43,363.08 and $36,910.00, representing liability for taxes against the year 1924 and the value of stock not delivered under the agreement between the United States Ferro Alloys Corporation and the Vanadium Corporation, respectively, have been allowed as deductions against profit which would have been realized under the terms of the original sales agreement.

49 In computing the capital net gain as shown above you are advised that this office holds that the amount of $338,815.50 paid by the Vanadium Corporation to the creditors of the United States Ferro Alloys Corporation constituted constructive receipt to the owners of the stock disposed of and, therefore, represents part of the purchase price to the Vanadium Corporation.

1925

Net income reported on return		$36,146.44
Capital net gain		279,803.34
Total income		$315,949.78
Less:		
Capital net gain reported	$279,803.34	
Correct capital net gain	8,880.13	
		270,923.21
Corrected total income		$45,026.57
Corrected capital net gain		8,880.13
Income subject to surtax		$36,146.44
Less:		
Dividends	$32,572.63	
Personal exemption	1,500.00	
		34,072.63
Income subject to normal tax		$2,073.63
Normal tax at 1½% on $2,073.81		$31.11
Surtax on $36,146.44		1,414.64
Tax at 12½% on capital net gain of $8,880.13		1,110.02
Total tax		$2,553.77
Less:		
Earned income credit	$7.78	
Tax paid at source	10.80	
		18.58
Total tax assessable		$2,537.19
Tax previously assessed		36,397.24
Overassessment		$33,860.05

Explanation of Change

Due to having included the entire profit from the transaction involving stock of the United States Ferro Alloys Corporation and the Vanadium Corporation in 1924, the amount of $270,923.21 reported in 1925 as capital net gain on stock of the first-named company, has been eliminated from income, thus resulting in an overassessment of $33,860.05 for the year.

In connection with the overassessment of $33,860.05 for the year 1925 shown above as barred by the statute of limitation, you are advised that under date of February 1, 1929, you were informed of the possibility of such overassessment and it was suggested that you protect your rights to the same by the filing of a claim with the Collector of Internal Revenue for your district. Inasmuch as this office has no record of such claim having been filed and since the three-year period within which an allowance might have been made without the filing of a claim, has expired, no adjustment will be made for the year 1925.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

A consent for the year 1924 extending the statutory period of limitations for making assessment against that year until December 31, 1930, is on file in this office.

51 Agreement as to final determination of tax liability

This agreement, made in duplicate under and in pursuance of Section 606 of the Revenue Act of 1928, by and between Mr. Parker Sloane, a taxpayer located at 8 East 62nd Street, New York, N. Y., and the Commissioner of Internal Revenue;

Whereas, there has been a determination of the tax liability of said taxpayer in respect of Federal Income Tax for the calendar years 1924 and 1925 in the principal sum of One Hundred Two Thousand Three Hundred Sixty Three Dollars and Eighty Four Cents ($102,363.84), exclusive of any penalty or interest properly applicable thereto as provided by law;

Now, this agreement witnesseth, that said taxpayer and said Commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if this agreement is approved by the Secretary of the Treasury, or the Undersecretary, within six months from the date this agreement is signed by the taxpayer.

In witness whereof, the above parties have subscribed their names to these presents in duplicate.

Signed this ------ day of ----------, 19--

----------,
Taxpayer.

By ----------,

[If the taxpayer is a corporation affix its seal here.]

52 The above agreement has been approved by the Secretary of the Treasury, or the Undersecretary, in accordance with the provisions of Section 606 of the Revenue Act of 1928, the approval being specifically enumerated on—

Schedule No. ------
Dated ----------
Signed ----------, 19--
(Date)

----------,
Commissioner of Internal Revenue.
By----------

Waiver of restrictions on assessment and collection of deficiency

Irrespective of the execution or approval of the foregoing instrument, the undersigned taxpayer hereby waives the restrictions provided in Section 274 (a) or 308 (a) of the Revenue Act of 1926 or Section 272 (a) of the Revenue Act of 1928 on the assessment and collection of any deficiency in tax included in the principal sum of

the tax liability as set forth in the said instrument, together with any penalty or interest properly applicable thereto as provided by law.

----------,
Taxpayer.

By ----------,

[If the taxpayer is a corporation affix its seal here.]

(See instructions on reverse side)

Original and duplicate to be accomplished and returned.

53 (272M)

NOTICE

Appeals should be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., in accordance with the rules of practice established by the Board

The United States Board of Tax Appeals is in no way connected with the Bureau of Internal Revenue or the Treasury Department. Under no circumstances should a petition on appeal be forwarded to the Commissioner or the Collector of Internal Revenue. If you decide to initiate a proceeding before the Board, your petition, proceedings, and proofs in the proceedings must be in accordance with the rules of practice of the Board, with Section 900 of the Revenue Act of 1924 and Section 1000 of the Revenue Act of 1926. Under the statute and the rulings of the Board a petition (together with a filing fee of $10.00) must be received and filed with the Board within sixty days from the date of mailing of the attached notice (not counting Sunday as the sixtieth day).

NOTICE

Interest at the rate of 6 per centum per annum computed as follows is due on all deficiencies in tax and will be included in notice and demand for payment.

54 For the years 1909 to 1920, inclusive, from February 26, 1926 (date of passage of the 1926 Act), to the date of assessment, or, in case of a waiver under Section 274 (d) of the 1926 Act, to the thirtieth day after the filing of such a waiver, whichever is the earlier.

For the years 1921 to 1924, inclusive, from the date prescribed for payment (or, if the tax is paid in installments, upon the part of the

deficiency prorated to each installment) to the date of assessment, or, in case of a waiver under Section 274 (d) of the 1926 Act, to the thirtieth day after the filing of such a waiver, whichever is the earlier.

For 1925 and subsequent years, from the date prescribed for the payment of the first installment to the date the deficiency is assessed, or, in case of a waiver under Sections 274 (d) of the 1926 Act or 272 (d) of the 1928 Act, to the thirtieth day after the filing of such waiver, whichever is the earlier.

The inclosed agreement when signed by you will constitute a waiver and will, if filed promptly, operate to curtail the amount of interest you will be obliged to pay since the interest period will terminate thirty days after filing, while without the waiver, assessment must be delayed sixty days from date of deficiency letter.

55 Before United States Board of Tax Appeals

[Title omitted.]

Answer, No. 47973

Filed Apr. 25, 1930

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits the allegations contained in paragraph 3 of the petition.
4. Denies that Commissioner erred as alleged in paragraph 4 (a), (b), and (c) of the petition.
5. Denies generally and specifically each and every allegation set forth in taxpayers' petition not hereinbefore admitted, qualified, or denied.

56 Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
PHILIP M. CLARK,
Special Attorney, Bureau of Internal Revenue.

PMC/IMM.
4/24/30.

Before United States Board of Tax Appeals

[Title omitted.]

Motion for Consolidation

Filed Jan. 28, 1932

Comes now the Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue,
57 and moves that the above entitled cases be consolidated for hearing, for the reason that the same question is involved in all three cases, and the same are now set for hearing on April 4, 1932.

Wherefore, it is prayed that the above entitled cases be consolidated for hearing.

(Signed) C. M. CHAREST,
C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
WILLIAM E. DAVIS and PAUL E. WARING,
Special Attorneys, Bureau of Internal Revenue.

Granted, Feb. 6, 1932.

(Signed) LOGAN MORRIS,
Member, U. S. Board of Tax Appeals.

Consolidated & cont'd. to Apr. 19, 1932.

58 Before United States Board of Tax Appeals

Docket Nos. 44061, 47451, 47973

JOHN J. WATTS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

HUGH C. SICARD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

PARKER SLOANE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Findings of fact and opinion

Promulgated August 11, 1933

The transaction herein detailed not resulting in a reorganization, gain or loss is to be recognized to petitioners.

John F. McCabe, Esq., James P. Quigley, Esq., and John J. Heberle, Esq., for the Petitioners.

59 W. E. Davis, Esq., and Paul Waring, Esq., for the respondent.

These proceedings, which were consolidated for hearing, involve the redetermination of deficiencies in the income taxes of the respective petitioners for the year 1924, amounting in each case to the sum of $63,441.83.

The issue is whether the petitioners respectively realized income from the transfer to the Vanadium Corporation of America of all the capital stock of the United States Ferro Alloys Corporation, or whether the transaction is exempt from taxation under section 203 (b) (2) of the Revenue Act of 1924.

Findings of fact

The United States Ferro Alloys Corporation (hereinafter called Ferro Alloys) was incorporated under the laws of the State of New York in January 1919 with a capital stock of $500,000, consisting of 5,000 shares of a par value of $100 each. Prior to the transaction herein involved the capital of the corporation was duly increased to the sum of $3,000,000, divided into 30,000 shares of a par value of $100 each, fully paid either in cash or property.

At the date of the agreement hereinafter referred to each of the petitioners herein owned one-third of the capital stock of Ferro Alloys.

On or about December 6, 1924, the petitioner Parker Sloane, as party of the first part, acting on his own behalf, and on behalf
60 of the other stockholders of Ferro Alloys, entered into a written agreement with the Vanadium Corporation of America (hereinafter referred to as the Vanadium Co.), as party of the second part, by which Sloane agreed to deliver to the party of the second part all of the 30,000 shares of the capital stock of Ferro Alloys. The Vanadium Co. is described in the agreement as a corporation incorporated under the laws of the State of Delaware, having its office at 120 Broadway, New York City.

The agreement recites that Sloane, individually and as trustee, owned and controlled all the outstanding issued shares of Ferro Alloys and was able to deliver to the Vanadium Co. duly endorsed certificates representing the entire interest in the assets of Ferro Alloys and was able to deliver to the Vanadium Co. all the certificates of stock of all subsidiary corporations owned by Ferro Alloys or in which it had an interest.

The agreement recites further that Sloane had represented that the assets of Ferro Alloys consist of about 30 acres of land at Niagara Falls, New York, together with the buildings, plant, machinery, equipment, and raw and finished supplies; also a certain lease of silica or sandstone quarries situated at Lewiston, New York, contracts covering the delivery of electric power, certain processes and patents, a certain contract covering the delivery of chrome ore; also all outstanding and issued shares of the Colonial Chrome Co., Ltd.,

which owned a plant, real estate, and a mine at Black Lake in the Province of Quebec, Canada; and also certain contracts not specifically described.

The recitals of the agreement also set forth the net worth of
61 the Ferro Alloys as of May 1924 as the sum of $3,477,575.80.

It is stated that this sum includes the sum of $338,815.50, representing advances to Ferro Alloys on chrome contracts of $298,815.50 and $40,000 due for unused power which is being paid and canceled.

The agreement also recites the obligations and liabilities of Ferro Alloys and it is stated that approximately $255,000 of the liabilities for materials delivered, labor, expenses, and accruals is assumed by the Vanadium Co. and will be paid out of current assets of Ferro Alloys.

Among other recitals the agreement contains the following:

"Whereas, said Parker Sloane is exchanging and delivering to and with the Vanadium Corporation of America Thirty Thousand (30,000) shares of the stock of the United States Ferro Alloys Corporation, organized under the laws of the State of New York, each of the par value of One Hundred Dollars ($100.00) and aggregating Three Million Dollars ($3,000,000.00) and being the total capital stock of said Corporation; and

"Whereas, the Vanadium Corporation of America is exchanging and delivering to said Parker Sloane, Trustee for the owners of said United States Ferro Alloys Corporation stock 66,666⅔ shares of the stock of the Vanadium Corporation of America, each share being without par value, together with bonds of the United States Ferro Alloys Corporation, aggregating One Million, One Hundred Sixty-one Thousand One Hundred and Eighty-four Dollars and 50/100 ($1,161,184.50) secured by a Trust Mortgage on its
62 land and plant at Niagara Falls and guaranteed as to payment of principal and interest by the said Vanadium Corporation of America, together with an assumption of the immediate payment by the Vanadium Corporation of America of certain due obligations as hereinafter set forth."

Article I of the agreement reads as follows:

"That the parties hereto do hereby fix the following as a complete understanding and agreement as to the terms and conditions of said exchange. The said Parker Sloane shall or does hereby exchange, transfer, and deliver to the said Vanadium Corporation of America, all the issued and outstanding stock of the United States Ferro Alloys Corporation, comprising Thirty Thousand (30,000) shares, and will have the present Directors and Officers resign to the intent that the Vanadium Corporation of America may replace same at its discretion.

"Said exchange shall cover and entitle the party of the second part to all the assets of the said United States Ferro Alloys Corporation as of December 23rd, 1924, including all the assets mentioned herein

and all the shares of stock in any subsidiary or subsidiaries owned by said United States Ferro Alloys Corporation or in which the Corporation has an interest.

"The said Vanadium Corporation of America shall or does hereby exchange, transfer, and deliver to said Parker Sloane as aforesaid, 66,666⅔ shares of the stock of said Vanadium Corporation of America, each share being of no par value."

63 The said Vanadium Corporation of America hereby causes to be issued and delivered to said Parker Sloane valid bonds to the amount of One Million, One Hundred Sixty-one Thousand One Hundred Eighty-four Dollars and Fifty Cents ($1,161,184.50) each for One Thousand ($1,000.00) Dollars except one bond for One hundred eighty-four Dollars and Fifty Cents ($184.50) bearing interest at 6% payable January 1st and July 1st of each year, and the said principal being payable as follows:

$161,184.50	February	1,	1925
150,000.00	January	1,	1926
150,000.00	"	1,	1927
150,000.00	"	1,	1928
150,000.00	"	1,	1929
150,000.00	"	1,	1930
150,000.00	"	1,	1931
100,000.00	"	1,	1932

$1,161,184.50

said bonds to be secured by a Trust Mortgage or deed on the entire plant, property and equipment of the United States Ferro Alloys Corporation at Niagara Falls, New York, and the payment of the principal and interest of said bonds to be duly and properly guaranteed by said Vanadium Corporation of America. Said mortgage and bonds shall provide that they are to have no voting power, and shall be preferred over all present or future stock issues of said United States Ferro Alloys Corporation, and in dissolution,

64 liquidation, merger and distribution of dividends and assets.

Besides the usual default clauses, there shall be provided a default clause to the effect that the Vanadium Corporation of America shall always have on hand for the use of the Niagara Falls Plant or in good faith contracted for in advance, at least sixty (60) days' supply of such materials and products as may be necessary and sufficient to employ the power now under contract with The Niagara Falls Power Company, together with the usual provisions in a mortgage of this character, which shall be approved by said Parker Sloane or his Counsel representing him in this transaction, including an insurance clause, a clause to provide for the privilege of payment of part or all of the principal remaining due at any time on 90 days notice, and a clause to the effect that the machinery, equipment and buildings, and entire plant shall be kept in good order and repair, to the intent that there shall be no deterioration of the value or productive capacity of said plant, and that all taxes, water rates, assessments and government charges

shall be properly paid and discharged; said Trust Mortgage shall be deposited in escrow with Guaranty Trust Company. Said bonds shall further provide that in case the holder thereof desires to part with the possession of any of said bonds, they will first be offered to the party of the second part at par and accrued interest and the party of the second part has the option to accept or reject said offer within ten days.

65 The Vanadium Corporation of America further agrees that upon the receipt of the Thirty Thousand (30,000) shares of the United States Ferro Alloys Corporation stock aforesaid that it will immediately forthwith pay or cause to be paid in cash, Two Hundred Ninety-eight Thousand Eight Hundred and Fifteen Dollars and Fifty Cents ($298,815.50) as directed by Parker Sloane, to the holders of certain obligations in the form of chrome contracts and representing moneys heretofore advanced to said United States Ferro Alloys Corporation, and upon the further production by said Parker Sloane or other person, of proper assignment or cancellation or under or by his direction of certain obligations amounting to Forty Thousand Dollars ($40,000.00) claimed to be due to the Niagara Falls Power Co. by the said United States Ferro Alloys Corporation, that thereupon the Vanadium Corporation of America will forthwith immediately pay the said Parker Sloane or as directed by him said sum of Forty Thousand Dollars ($40,000.00).

Pursuant to the terms of the contract the parties agreed that it should be fully performed and carried out at noon on December 19. 1924, at which time all the shares of Ferro Alloys, including all shares of its subsidiary corporation, duly endorsed and assigned to the party of the second part together with the resignations of the officers and directors of each corporation should be delivered to the Vanadium Co. and that the Vanadium Co. should thereupon place 66,666⅔ shares of its stock in escrow with Guaranty Trust

66 Co. and should duly deliver to Ferro Alloys the bonds hereinbefore described and immediately pay the amounts it had "assumed to pay" under the provisions of Article I of the agreement.

The agreement provides for a complete audit of the business, properties, and profits of Ferro Alloys and the parties agreed that the escrow deposit with the Guaranty Trust Co. should be dissolved on January 1, 1926, and that the exact number of shares of Vanadium Co. to be then delivered to Sloane for himself and the other parties entitled thereto should be determined on the basis of the earning power of Ferro Alloys demonstrated during 1925.

By a supplemental agreement dated December 18, 1924, entered into by the parties to the original agreement, the amount of its stock which the Vanadium Co. was to "exchange, transfer, and deliver to Sloane as trustee was reduced to 33,333⅓ shares.

The stock of Vanadium Co. was of no par value and for the purposes of the agreement its value was fixed at $30 per share.

The contract was duly executed in accordance with its terms, but as a result of the demonstrated earning power of Ferro Alloys during the year 1925 only 32,103 shares of the stock of the Vanadium Co. were delivered to Sloane for himself and the other persons entitled thereto upon the dissolution of the escrow with the Guaranty Trust Co.

Concurrently with the closing of the transaction and in accordance with the terms of the agreement, the Vanadium Co. paid to
67 creditors of Ferro Alloys the sum of $338,815.50; $298,815.50 being paid to one Louise M. Higham and $40,000 being paid to the Niagara Falls Power Co. After these payments to the two creditors the Vanadium Co. appeared on the books of Ferro Alloys as a creditor to "the extent of $338,000."

On July 2, 1928, a certificate of the dissolution of Ferro Alloys was filed in the office of the Secretary of State of the State of New York.

In the respective deficiency letters the respondent held in substance that the transaction herein involved was a sale of the 30,000 shares of Ferro Alloys for the sum of $2,500,000, made up as follows:

33,333⅓ shares of Vanadium Corporation stock at $30 a share	$1,000,000.00
Bonds taken as part payment	1,161,184.50
Payment to Louise M. Higham	298,815.50
Payment to Niagara Power Co	40,000.00
	2,500,000.00

The respondent computed the capital net gain of each of the petitioners as follows:

Received for total stock of United States Ferro Alloys Corporation		$2,500,000.00
Alloys Corporation	$338,815.50	
2. Additional cost allowed	43,363.08	
3. Value of undelivered stock	36,910.00	
		419,088.58
Net sale price		2,080,911.42
⅓ interest		693,637.14
Cost of stock		186,102.49
Capital net gain		507,534.65

The sum of $43,363.08 described in the respondent's computation as "additional cost allowed" represents the liability of the petitioners under their agreement with the Vanadium Co. for taxes against the year 1924.

In computing the capital net gain the respondent stated that it was held that the amount of $338,815.50 "paid by the Vanadium Corporation to the creditors of the United States Ferro Alloys Corporation constituted constructive receipt to the owners of the stock disposed of and, therefore, represents part of the purchase price to the Vanadium Corporation." It was stipulated at the hearing that the payment of this sum by the Vanadium Co. did not make the same income to the ptitioners.

Opinion

VAN FOSSAN: The petitioners in these proceedings contend that they exchanged all of the stock of Ferro Alloys for stock of the Vanadium Co. and bonds of Ferro Alloys guaranteed by the Vanadium Co.; that these two corporations were parties to a reorganization and that, therefore, under the provisions of section 203 (b) (2) of the Revenue Act of 1924, no gain may be recognized. The respondent, on the other hand, contends that the transaction between Sloane and the Vanadium Co. was a sale by the petitioners
69 of all of the capital stock of Ferro Alloys and that it resulted in the creation of income taxable to the petitioners.

The applicable statutes are sections 202 and 203 of the Revenue Act of 1924. Section 202 provides, in part, as follows:

(a) Except as hereinafter provided in this section, the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in subdivision (a) or (b) of section 204, and the loss shall be excess of such basis over the amount realized.

* * * * * * *

(d) In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purpose of this title, shall be determined under the provisions of section 203.

Section 203 provides, in part:

(a) Upon the sale or exchange of property the entire amount of the gain or loss determined under section 202 shall be recognized, except as hereinafter provided in this section.

* * * * * * *

(b) (2) No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

* * * * * * *

70 (h) As used in this section and sections 201 and 204—

(1) The term "reorganization" means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation) * * *.

In our opinion the determinative question is that of reorganization and, unless the transaction stated in the findings of fact constituted a reorganization of Ferro Alloys and the Vanadium Co., it is unnecessary to discuss whether there was an actual sale of the stock of Ferro Alloys by the petitioners or whether the transaction was an exchange of all of the stock of Ferro Alloys for stock of the Vanadium Co. and bonds of Ferro Alloys. If the two corporations

were not parties to a reorganization the gain, if any, accruing to the petitioners by reason of the transaction is taxable.

Under the provisions of section 203 (h) (1) (A), hereinbefore quoted, the term "reorganization" means a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation). While the Vanadium Co. acquired all the capital stock of Ferro Alloys and, therefore, obtained a full and complete control of the
71 latter corporation, we are of the opinion that it does not appear that the two corporations were either consolidated or merged. A consolidation of two corporations involves the dissolution of both and the transfer of their corporate assets and franchise to a new corporation. In a merger, on the other hand, one of two merged corporations loses its identity in the other. One corporation goes out of existence; the other corporation survives and the latter absorbs the property and franchises of the merged corporation whose stock it has acquired. Railroad Co. v. Georgia, 98 U. S. 359, 362; Matter of Bergdorf, 206 N. Y. 309; 99 N. E. 714; Irvine v. N. Y. Edison Co., 207 N. Y. 425; 101 N. E. 358; Pinellas Ice & Cold Storage Co. v. Commissioner, 57 Fed. (2d) 188; affd., 287 U. S. 462; Cortland Specialty Co. v. Commissioner, 60 Fed. (2d) 937.

In the Cortland Specialty Co. case, supra, cited with approval by the Supreme Court in Pinellas Ice & Cold Storage Co. v. Commissioner, supra, the Circuit Court of Appeals for the Second Circuit, referring to state statutes relating to the consolidation and merger of corporations, said:

"Undoubtedly such statutes vary in the different states particularly in respect to how far the constituent companies may be deemed to survive the creation of the *new or modified corporate structure*, but we believe that the general purpose of them all has been to continue the interests of those owning enterprises, which have been merged or consolidated, in another corporate form. • • • When
72 describing the kind of change in corporate structure that permits exemption from these taxes, Section 203 *does not disregard the necessity of continuity of interests under modified corporate forms.* Such is the purpose of the word 'reorganization' in Sec. 203 (b) (3) where a corporation exchanges its property 'solely for stock or securities.'" [Italics ours.]

The petitioners contend that there was a merger of the two corporations arising out of the provisions of the agreement between Sloane and the Vanadium Co. In our opinion the evidence does not lead to this conclusion. Under the provisions of the agreement the Vanadium Co. did acquire all of the capital stock of Ferro Alloys. This acquisition, however, created merely a change in the stock ownership of the latter company. The agreement contains no provisions looking to the creation of a "new or modified corporate structure."

Therefore, although the former stockholders of Ferro Alloys secured for their stock in that company an interest in Vanadium Co., the transaction was not within the provisions of section 203 (b)(2) for the reason that their interest was not continued under a new or modified corporate form.

Section 203 (b)(2) provides that "no gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities", etc. The evidence discloses no plan of reorganization and the agreement between Sloane and the Vanadium Co. contains none. There is no provision in the agreement that
73 Ferro Alloys should be dissolved upon the performance of the agreement. On the contrary, there is evidence in the terms of the agreement that it was the intention of the parties thereto that that company was to maintain its separate corporate entity after the performance of the contract and the delivery of the stock of Ferro Alloys owned by the petitioners. Part of the consideration paid to the petitioners for the stock transferred by them was, under the terms of the agreement, bonds of Ferro Alloys. Some of these bonds, unless previously called, were not to mature prior to January 1, 1932, or eight years after the execution of the agreement and six years after the date provided in the agreement for the dissolution of the escrow deposit of the Vanadium Co.'s stock. At the very time, therefore, when it is contended that a merger of Ferro Alloys was effected it was provided that Ferro Alloys should issue obligations not maturing before 1932. At such time, therefore, it could not have been in contemplation of the parties that Ferro Alloys would be dissolved upon the performance of the agreement set out in the findings of fact.

It appears that the Vanadium Co. was incorporated under the laws of the State of Delaware and had its office in New York City. Presumptively, therefore, it was authorized as a foreign stock corporation under the laws of the State of New York to do business in that State. Ferro Alloys was organized under the laws of the State of New York. Section 85 of article 8 of the Stock Corporation Law of the State of New York, relating to the merger of corporations, provides in effect, among other things, that any foreign stock corporation authorized to do business
74 in the State of New York owning all the stock of any domestic stock corporation may file in the office of the secretary of state a certificate of such ownership, duly executed in accordance with the provisions of the section, and that thereupon all of the estate, property, rights, privileges, and franchises of such other corporation shall vest in and be held and enjoyed by such possessor corporation as fully and entirely as the same were before held by such other corporation.

The evidence does not disclose that the Vanadium Co. at any time filed the certificate provided in the quoted statute. While it may

be that a legal merger of Ferro Alloys and the Vanadium Co. might be effected without the filing of the certificate provided, yet evidence that the certificate had been filed contemporaneously with performance of the agreement between Sloane and the Vanadium Co. would be of weight with reference to the intent of the parties to merge Ferro Alloys with the Vanadium Co. Lack of such evidence is at least of some significance respecting the existence of a contrary intent.

It is true that the facts show that Ferro Alloys was dissolved in July 1928 but this date was several years after the performance of the agreement and the dissolution can not, therefore, be held to be evidence that an intention to merge the two corporations existed at the time of the performance of the transaction now in question.

It seems to us apparent that neither a merger nor a consolidation in the ordinary sense of the words occurred, nor do we believe in the face of the facts that the transaction was one of those
75 "things which partake of the nature of a merger or consolidation but are beyond the ordinary and commonly accepted meaning of those words * * *" embracing "circumstances difficult to delineate but which in strictness can not be designated as either a merger or consolidation", as was observed by the Supreme Court in Pinellas Ice & Cold Storage Co., supra. While the Supreme Court indicated in the above decision that it deemed the opinion of the circuit court in the Pinellas case to be too strict and that the language in parentheses in the statutory definition of a reorganization was intended to work an expansion or enlargement of the meaning of the words, it remains for us to determine whether the instant situation satisfies such expanded definition. In the construction of the language referred to the words "merger or consolidation" are still of guiding import. The transaction must resemble a merger or consolidation, though it fails to satisfy all of its legal requirements.

In the case before us, as already appears, there are certain facts of importance that weigh heavily against a conclusion that the transaction was "of the nature of a merger or consolidation." Definite evidence of an intention to effect a merger or consolidation is lacking. There was no provision for the dissolution of Ferro Alloys. The commitments assumed by it indicate an intended continuation of existence. Such obligations are not consistent with impending extinction. We believe them to be so foreign to the concept of a merger or consolidation that it cannot be said that the transaction partook of the nature of a merger or consolidation. We, therefore, conclude that the transaction here involved did not
76 constitute a reorganization under the statute and that any gain resulting to the petitioners therefrom must be recognized.

There is another fact which injects itself into the consideration of the case, and that is the agreement on the part of the Vanadium Co. to pay in cash the sum of $298,815.50 to the holders of certain

obligations due under chrome contracts with Ferro Alloys and $40,000 to petitioner Sloane or his nominee on account of obligations due to the Niagara Falls Power Co. from Ferro Alloys. Though the parties stipulated that these payments did not of themselves constitute income to the petitioners, this does not remove the question of the effect of these payments on the alleged reorganization. Ferro Alloys was obligated on these accounts to the amount of $338,815.50. When Vanadium paid these accounts Ferro Alloys was relieved of the obligations to the creditors to the same extent as though it had been paid the cash by Vanadium and had in turn paid the obligations in the stated amount. Thereafter Vanadium appeared on the books of Ferro Alloys as a creditor. In view of these facts, can it be said that the consideration for the delivery of Ferro Alloys stock was solely stock or securities?

The petitioners have not objected to the valuation of the securities made by the respondent in his computation of the deficiency in tax. This valuation must, therefore, be presumed to be correct.

Decision will be entered under Rule 50.

77 Before United States Board of Tax Appeals

[Title omitted.]

Order for Review by Board, August 23, 1933

Pursuant to the authority contained in section 601 (b) of the Revenue Act of 1928, I hereby direct that the report of Division No. 9 in the above-entitled proceedings, dated July 26, 1933, and promulgated August 11, 1933, be reviewed by the Board.

(Signed) EUGENE BLACK,
Acting Chairman.

Dated, Washington, D. C., August 23, 1933.

78 Before United States Board of Tax Appeals,
Washington

Docket Nos. 44,061, 47,451, 47,973

JOHN J. WATTS, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Order of Affirmance of Board, October 17, 1933

The report and determination of Division No. 9 in the above entitled proceedings was promulgated on August 11, 1933, and thereafter on August 23, 1933, referred to the Board by the Acting Chairman under the provisions of Section 601 (b) of the Revenue Act of 1928 for review.

Said review having been had by the Board on October 13, 1933, it is

Ordered: That the report and determination above mentioned be and the same is hereby affirmed.

By the Board:

LOGAN MORRIS,
Chairman.

Dated, October 17, 1933.

STERNHAGEN, concurring: I agree that this was not a statutory reorganization, but I would place less emphasis upon the omission to dissolve the Ferro Corporation. In other words, I should
79 say that in a case which was otherwise within part (A) of the definition, there might be a statutory reorganization despite the continued legal existence of the corporations involved.

Leech and Adams agree with the above.

Trammell, dissenting: In my opinion, the facts in this case bring it squarely within the reorganization provisions of the statute as interpreted by the Supreme Court in the Pinellas case and by the court of appeals in the Cortland Specialty case, cited in the above case. The reorganization provisions do not require that one corporation be dissolved. The reorganization as defined in the statute is not limited to a technical merger or reorganization, but is made broader by the parenthetical clause. There was, in my opinion, the continuing interest which the above decisions referred to as being necessary.

ARUNDELL, dissenting: In my opinion the facts bring the case within the reorganization provisions of the statute. I think that too much stress is placed on the fact that dissolution of Ferro Alloys was delayed for several years after the acquisition of its stock by Vanadium. The statute does not in terms require dissolution at any time. While dissolution is a usual concommitant of a strict merger or consolidation, the parenthetical clause in Section 203 (h) (1) extends the application of the statute "to include some
80 things which partake of the nature of a merger or consolidation but are beyond the ordinary and commonly accepted meaning of those words—so as to embrace circumstances difficult to delimit but which in strictness cannot be designated as either merger or consolidation." Pinellas Ice & Cold Storage Co. v. Commissioner, 287 U. S. 462. The effect of the majority opinion is to disregard the words within the parenthesis and this the Supreme Court in the Pinellas case has said very difinetil may not be done. Nor is it material that petitioners received bonds of the Ferro Alloys Co. as well as stock in the Vanadium Co. Section 203 (b) (2) contemplates just such cases. There was here present that continuity of interest emphasized in Cortland Specialty Co. v. Commisisoner, 60 Fed. (2d) 937, and Pinellas Ice & Cold Storage Co., supra.

SMITH, BLACK, and GOODRICH agree with the above dissent.

81 Before United States Board of Tax Appeals

Docket No. 44061

JOHN J. WATTS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the findings of fact and opinion of the Board promulgated August 11, 1933, the respondent herein on December 18, 1933, filed a notice of settlement and proposed computation, and the petitioner on January 9, 1934, having filed an acquiescence in the computation as made by the respondent, now therefore, it is

Ordered and decided that there is a deficiency in income tax of $63,441.83 for the year 1924.

Enter:

Entered Jan. 13, 1934.

(Signed) ERNEST H. VAN FOSSAN,
Member.

[SEAL.]

82 Before United States Board of Tax Appeals

Docket No. 47451

HUGH C. SICARD, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the findings of fact and opinion of the Board promulgated August 11, 1933, the respondent herein on December 18, 1933, filed a notice of settlement and proposed computation, and the petitioner on January 8, 1934, having filed an acquiescence in the computation as made by the respondent, now therefore, it is

Ordered and decided that there is a deficiency in income tax of $63,441.83 for the year 1924.

Enter:

Entered Jan. 15, 1934.

(Signed) ERNEST H. VAN FOSSAN,
Member.

[SEAL.]

83 Before United States Board of Tax Appeals

Docket No. 47973

PARKER SLOANE, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the findings of fact and opinion of the Board promulgated August 11, 1933, the respondent herein on December 18, 1933, filed a notice of settlement and proposed computation, and the petitioner on January 8, 1934, having filed an acquiescence in the computation as made by the respondent, now therefore, it is

Ordered and decided that there is a deficiency in income tax of $63,441.83 for the year 1924.

Entered Jan. 15, 1934.

(S) ERNEST H. VAN FOSSAN,
Member.

[SEAL.]

84 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Petition for review, No. 44061

Filed Feb. 7, 1934

To the honorable judges of the United States Court of Appeals for the Second Circuit:

The taxpayer, John J. Watts, the Petitioner in this case, by John F. McCabe, his Counsel, hereby files a petition for a review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the United States Board of Tax Appeals rendered on January 13, 1934, determining a deficiency in the petitioner's federal income tax for the calendar year 1924, in the amount of $63,441.83, and respectfully shows:

I

The petitioner on review (hereinafter referred to as the taxpayer) is an individual residing at No. 131 Riverside Drive,
85 New York, N. Y. The respondent on review (hereinafter referred to as the Commissioner) is a duly appointed, qualified, and acting Commissioner of Internal Revenue of the United

States, holding his office by virtue of the laws of the United States. The taxpayer filed his income-tax return for the calendar year 1924 with the Collector of Internal Revenue for the Third District of New York and the office of the said Collector of Internal Revenue is located within the judicial circuit of the United States Circuit Court of Appeals for the Second Circuit.

II

The Commissioner determined a deficiency in income taxes for the calendar year 1924 in the amount of $63,441.83, and, on March 13, 1929, in accordance with the provisions of Section 274 of the Revenue Act of 1926, sent to the taxpayer by registered mail a notice of said deficiency. Thereafter the taxpayer filed an appeal from said notice of deficiency with the United States Board of Tax Appeals. The said appeal was heard in a trial held by the said Board on April 19, 1932, the Hon. Ernest H. Van Fossan, sitting for the Board. Thereafter, on August 11, 1933, the Board of Tax Appeals promulgated its findings of fact in and opinion in said appeal. On August 21, 1933, the taxpayer made a motion for a Review by the Board of the said opinion or Report, and upon consideration of the motion and the said Report, the Board ordered that the said Report and determination be affirmed—but with five dissents to the majority opinion.

86 Thereafter, on January 13, 1934, the Board entered a judgment and final order of redetermination in which the Board ordered and decided that there was a deficiency in income tax for the year 1924 in the amount of $63,441.83.

III

NATURE OF THE CONTROVERSY

The deficiency which was in controversy before the Board of Tax Appeals arose or resulted from the determination of the Commissioner in setting up a capital gain of $507,534.65 in respect to the so-called "sale" of the taxpayer's stock in the United States Ferro Alloys Corporation to the Vanadium Corporation. At the trial the taxpayer contended that the transaction was an exchange of his stock of the United States Ferro Alloys Corporation for stock and securities of the Vanadium Corporation, under the reorganization provisions of the Revenue Act of 1924 and the regulations pertaining thereto.

The taxpayer further contended and adduced evidence at the trial that he did not receive either money or other property additional to the stock and bonds received in exchange for his stock and therefore he maintained that he did not incur any tax liability in 1924 in respect to the said transaction. As to certain payments made to third party creditors, the Commissioner conceded at the trial that such payments did not give rise to taxable income.

The Board of Tax Appeals held that the determinative question is that of reorganization and unless the transaction stated in
87 the findings of fact constituted a reorganization of Ferro Alloys and the Vanadium Corporation, then the transaction is taxable, and it is unnecessary to discuss whether or not the transaction was a sale or whether it was an exchange. The Board of Tax Appeals further held that, contrary to the previous understanding and regulations dealing with this question, unless the taxpayer could show that there had been either a merger or a consolidation (in the strict, technical sense of these terms), there cannot be a tax-free reorganization under the statute. Thereupon, the Board found that the transaction here involved did not constitute a reorganization under the statute.

IV

The said taxpayer, being aggrieved by the findings of fact and conclusions of law contained in the said findings and opinion of the Board and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Second Circuit.

V

The taxpayer says that in the record and proceedings before the Board of Tax Appeals and in the decision and final order entered by the Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the taxpayer, and

The petitioner assigns the following errors; and each of them, which he avers, occurred in the said record, proceedings, decision, and final order of the Board and upon which he relies to
88 reverse the said decision and final order so rendered and entered by the Board of Tax Appeals, to wit:

1. The Board erred in holding that the determinative question is solely that of reorganization and unless the transaction stated in the findings of fact constituted a reorganization, according to the Board's own narrow definition of this term, then the transaction is taxable.

2. The Board erred in holding that unless there had been either (a) a merger, or (b) a consolidation (in the technical sense of these terms), there could not be a reorganization under Section 203 (b) (2) of the Revenue Act of 1924.

3. The Board erred in holding that the transaction by which the taxpayer exchanged his stock in the United States Ferro Alloys Corporation for stock of the Vanadium Corporation and bonds, guaranteed by the Vanadium Corporation, constituted a sale and not an exchange under the Revenue Act.

4. The Board erred in finding that there was no provision for the dissolution of the United States Ferro Alloys Corporation and in further assuming that the statute requires the immediate dissolution of one of the corporations in order to make the transaction constitute a merger or consolidation.

5. The Board erred in finding that because the Ferro Alloys Corporation was not immediately dissolved the continuing interest of the stockholders was fatal to a tax-free reorganization.

89 6. The Board erred in failing to hold that the petitioner exchanged all of his stock of the United States Ferro Alloys Corporation for stock of the Vanadium Corporation and bonds, guaranteed by the Vanadium Corporation, in the manner permitted under Section 203 (b) (2) of the Revenue Act of 1924.

7. The Board erred in failing to find that the transaction described in the findings of fact and opinion was one in which "no gain or loss shall be recognized" pursuant to Section 203 of the Revenue Act of 1924.

8. The Board erred in that its opinion and decision are not supported by the findings of fact.

9. The Board erred in that its opinion and decision are not supported by statute (Revenue Act of 1924) or by the regulations pertaining thereto.

VI

WHEREFORE, the taxpayer petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Second Circuit and that a transcript of the record be prepared in accordance with the law and with the rules of the said Court and be transmitted to the Clerk of said Court for filing and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by the said Court.

(s) JOHN F. MCCABE,
Counsel for the Petitioner,
120 Broadway, New York, N. Y.

90 [*Duly sworn to by John F. McCabe; jurat omitted in printing.*]

91 In United States Circuit Court of Appeals, for the Second Circuit

[Title omitted.]

Notice of filing petition for review, no. 44061

Filed Feb. 7, 1934

To Guy T. Helvering, Commissioner of Internal Revenue, Washington, D. C.

Please take notice that the above taxpayer did, on the day of February 1934, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board heretofore rendered in the above-entitled

case. A copy of the petition for review and the assignments of error as filed is hereby attached and served upon you.

Dated, this day of February 1934.

(Signed) JOHN F. McCABE,
JOHN F. McCABE,
Attorney for Petitioner,
120 Broadway, New York, N. Y.

92 Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this day of , 1934.

E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue,
Attorney for Respondent on Review.

Before United States Board of Tax Appeals

[Title omitted.]

Petition for review, no. 47451

Filed Feb. 7, 1934

To the honorable judges of the United States Circuit Court of Appeals for the Second Circuit:

Comes Now the petitioner Hugh C. Sicard by his attorneys James P. Quigley and Robert J. Heberle, and respectfully shows:

93 I

The petitioner, an individual residing at No. 32 East 64th Street, New York City, filed an income tax return for the calendar year 1924, in the office of the Collector of Internal Revenue for the Third District of New York, which is within the jurisdiction of this court; and accordingly, he respectfully petitions this court to review a decision and final order, entered against him by the United States Board of Tax Appeals on January 15, 1934, in which he is held liable for a tax deficiency of $63,441.83 on his said return.

II

On December 6, 1924, the petitioner owned one-third of the capital stock of United States Ferro Alloys Corporation—hereinafter called Ferro Alloys, and on behalf of himself and the owners of the other two-thirds, he executed a contract with Vanadium Corporation of America—hereinafter called Vanadium, wherein he agreed to deliver to Vanadium all of the capital stock of Ferro Alloys, and Vanadium agreed to deliver to him certain shares of its own capital stock and also bonds of Ferro Alloys guaranteed by it. Vanadium also

agreed to pay certain amounts to creditors of Ferro Alloys, and to thus become its creditor in their stead. All of those undertakings were performed substantially as agreed.

The petitioner, having exchanged his Ferro Alloys stock solely for other stock and bonds, returned the transaction as an exchange in which the statute provides that no gain or loss shall be recog-
94 nized; but the Commissioner held that it resulted in a capital net gain on which he determined to assess the petitioner with a tax deficiency of $63,441.83.

The Commissioner also made similar findings against each of the other two owners of stock in Ferro Alloys, and all three having appealed from his conclusions, their cases were consolidated for hearing.

The Board of Tax Appeals (with five members dissenting) has now sustained the Commissioner and has entered an order against this petitioner for said tax deficiency.

III

The question presented is whether or not the Board of Tax Appeals has properly interpreted the following provisions of the Revenue Act of 1924 on which it relies:

SEC. 203. (a) Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 202, shall be recognized, except as hereinafter provided in this section.

SEC. 203. (b) (2) No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

SEC. 203. (h) (1) The term "reorganization" means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a
95 majority of the total number of shares of all other classes of stock of another coporation, or substantially all the properties of another corporation), or (B) * * *

SEC. 203 (h) (2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stocks of another corporation.

IV

The petitioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in deciding that the exchange of securities in this case, is not exempt from recognition of gain be-

cause the reorganization which it effected did not result in the dissolution of either of the involved corporations.

2. The Board of Tax Appeals erred in not deciding that in pursuance of the plan of reorganization, the petitioner exchanged stock in Ferro Alloys solely for stock in Vanadium and bonds of Ferro Alloys, and that no gain or loss should be recognized as a result of that exchange because both corporations were parties to a reorganization in which all of the stock of Ferro Alloys was similarly acquired by Vanadium.

Wherefore, the petitioner prays that a transcript of the
96 record of this proceeding, be prepared in accordance with the law and the rules of the United States Circuit Court of Appeals for the Second Circuit, and that it be transmitted to the clerk of said court for filing; and that the decision and order of the Board of Tax Appeals herein be reviewed by the said court, and that appropriate action be taken to the end that the errors herein complained of may be corrected.

(S) JAMES P. QUIGLEY,
(S) ROBERT J. HEBERLE,
Attorneys for the Petitioner,
43 Cedar Street, New York City, N. Y.

[*Duly sworn to by James P. Quigley, jurat omitted in printing.*]

97 Before United States Board of Tax Appeals

[Title omitted.]

Notice of filing petition for review, No. 47451

Filed Feb. 7, 1934

To: E. BARRETT PRETTYMAN, ESQ.,
General Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

You are hereby notified that a Petition for Review in the above-entitled cause was filed with the United States Board of Tax Appeals on the day of February, 1934.

A copy of said petition is served upon you herewith.

(S) JAMES P. QUIGLEY,
(S) ROBERT J. HEBERLE,
Attorneys for the Petitioner,
43 Cedar Street, New York City, N. Y.

Service accepted this 7th day of Feb., 1934.

(S) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

98 Before United States Board of Tax Appeals

[Title omitted.]

Petition for review, No. 47973

Filed Feb. 7, 1934

To the honorable judges of the United States Circuit Court of Appeals for the Second Circuit:

Comes Now the petitioner Parker Sloane by his attorneys James P. Quigley and Robert J. Heberle, and respectfully shows:

I

The petitioner, an individual residing at No. 8 East 62nd Street, New York City, filed an income tax return for the calendar year 1924, in the office of the Collector of Internal Revenue for the Third District of New York, which is within the jurisdiction of this court; and accordingly, he respectfully petitions this court to review a decision and final order, entered against him by the United States Board of Tax Appeals on January 15, 1934, in which he is held liable for a tax deficiency of $63,441.83 on his said return.

99 II

On December 6, 1924, the petitioner owned one-third of the capital stock of United States Ferro Alloys Corporation—hereinafter called Ferro Alloys, and on behalf of himself and the owners of the other two-thirds, he executed a contract with Vanadium Corporation of America—hereinafter called Vanadium, wherein he agreed to deliver to Vanadium all of the capital stock of Ferro Alloys, and Vanadium agreed to deliver to him certain shares of its own capital stock and also bonds of Ferro Alloys guaranteed by it. Vanadium also agreed to pay certain amounts to creditors of Ferro Alloys, and to thus become its creditor in their stead. All of those undertakings were performed substantially as agreed.

The petitioner, having exchanged his Ferro Alloys stock solely for other stock and bonds, returned the transaction as an exchange in which the statute provides that no gain or loss shall be recognized; but the Commissioner held that it resulted in a capital net gain on which he determined to assess the petitioner with a tax deficiency of $63,441.83.

The Commissioner also made similar findings against each of the other two owners of stock in Ferro Alloys, and all three having appealed from his conclusions, their cases were consolidated for hearing.

The Board of Tax Appeals (with five members dissenting) has now sustained the Commissioner and has entered an order against this petitioner for said tax deficiency.

100

III

The question presented is whether or not the Board of Tax Appeals has properly interpreted the following provisions of the Revenue Act of 1924 on which it relies:

SEC. 203. (a) Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 202, shall be recognized, except as hereinafter provided in this section.

SEC. 203. (b) (2) No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

SEC. 203. (h) (1) The term "reorganization" means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (B) * * *

SEC. 203. (h) (2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes
both corporations in the case of an acquisition by one corpora-
101 tion of the voting stock and at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

IV

The petitioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in deciding that the exchange of securities in this case, is not exempt from recognition of gain because the reorganization which it effected did not result in the dissolution of either of the involved corporations.

2. The Board of Tax Appeals erred in not deciding that in pursuance of the plan of reorganization, the petitioner exchanged stock in Ferro Alloys solely for stock in Vanadium and bonds of Ferro Alloys, and that no gain or loss should be recognized as a result of that exchange because both corporations were parties to a reorganization in which all of the stock of Ferro Alloys was similarly acquired by Vanadium.

Wherefore, the petitioner prays that a transcript of the record of this proceeding, be prepared in accordance with the law and the rules of the United States Circuit Court of Appeals for the Second Circuit, and that it be transmitted to the clerk of said court for

filing; and that the decision and order of the Board of Tax Appeals herein be reviewed by the said court, and that appropriate
102 action be taken to the end that the errors herein complained of may be corrected.

(S) JAMES P. QUIGLEY,
(S) ROBERT J. HERERLE,
Attorneys for the Petitioner,
43 Cedar Street, New York City, N. Y.

[*Duly sworn to by Parker Sloane; jurat omitted in printing.*]

103 Before United States Board of Tax Appeals

[Title omitted.]

Notice of Filing Petition for Review, No. 47973

Filed Feb. 7, 1934

To: E. BARRETT PRETTYMAN, ESQ.,
General Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

You are hereby notified that a Petition for Review in the above-entitled cause was filed with the United States Board of Tax Appeals on the day of February, 1934.

A copy of said petition is served upon you herewith.

(S) JAMES P. QUIGLEY,
(S) ROBERT J. HERERLE,
Attorneys for the Petitioner,
43 Cedar Street, New York City, N. Y.

Service accepted this 7th day of Feb., 1934.

(S) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

104 Before United States Board of Tax Appeals

[Title omitted.]

Statement of Evidence

Filed May 21, 1934

The following is a full and complete statement of all evidence material to the questions presented on review herein, which was submitted at the hearing of the above-entitled appeals before the Honorable Ernest H. Van Fossan, Member of the United States Board of Tax Appeals at Washington, D. C., on April 19, 1933.

* * * * * * *

The United States Ferro Alloys Corporation (hereinafter called Ferro Alloys) was incorporated under the laws of the State of New York in 1919. Before and during the transaction hereinvolved the corporation was capitalized at $3,000,000 divided into 30,000 fully paid shares of which each petitioner owned one-third.

On or about December 6, 1924, the petitioner, Parker Sloane, individually and as trustee for the other stockholders of
105 Ferro Alloys, entered into a written agreement with the Vanadium Corporation of America, a Delaware corporation hereinafter referred to as Vanadium.

The agreement states that Sloane, individually and as trustee, owned and controlled all of the outstanding stock of Ferro Alloys and was able to deliver to Vanadium all of the certificates of stock of subsidiary corporations owned by Ferro Alloys or in which it had an interest.

The agreement also states that the assets of Ferro Alloys consisted of about 30 acres of land at Niagara Falls, New York, with buildings, plant, machinery, equipment, and raw and finished supplies; also contracts covering delivery of electric power, patents, and all of the outstanding stock of Colonial Chrome Co., Ltd., which owned a mine and plant in Canada; and that the net worth of Ferro Alloys as of May 1, 1924, was $3,477,575.80, which includes the sum of $338,815.50 representing advances to Ferro Alloys of $298,815.50 on Chrome contracts and $40,000 for unused power.

The amounts of $298,815.50 and $40,000.00 were paid by Vanadium concurrently with the closing of the agreement and in accord with its terms, to Louise M. Higham and Niagara Falls Power Company. Vanadium thereby became a creditor on the books of Ferro Alloys to the extent of that $338,000.00.

The agreement also recites the obligations and liabilities of Ferro Alloys and it is stated that approximately $255,000.00 of the liabilities for materials delivered, labor, expenses and accruals is assumed by the Vanadium Co. and will be paid out of current
106 assets of Ferro Alloys. Among other recitals the agreement also contained the following:

"Whereas, said Parker Sloane is exchanging and delivering to and with the Vanadium Corporation of America Thirty Thousand (30,000) shares of the stock of the United States Ferro Alloys Corporation, organized under the laws of the State of New York, each of the par value of One Hundred Dollars ($100) and aggregating Three Million Dollars ($3,000,000.00) and being the total capital stock of said Corporation; and

"Whereas, the Vanadium Corporation of America is exchanging and delivering to said Parker Sloane, Trustee for the owners of said United States Ferro Alloys Corporation stock 66,666⅔ shares of the stock of the Vanadium Corporation of America each share being without par value, together with bonds of the United States Ferro Alloys Corporation, aggregating One Million, One Hundred Sixty-one Thousand One Hundred and Eighty-four Dollars and

50/100 ($1,161,184.50) secured by a Trust Mortgage on its land and plant at Niagara Falls and guaranteed as to payment of principal and interest by the said Vanadium Corporation of America, together with an assumption of the immediate payment by the Vanadium Corporation of America of certain due obligations as hereinafter set forth."

Article I of the agreement reads as follows:

"That the parties hereto do hereby fix the following as a
107 complete understanding and agreement as to the terms and conditions of said exchange. The said Parker Sloane shall or does hereby exchange, transfer, and deliver to the said Vanadium Corporation of America, all the issued and outstanding stock of the United States Ferro Alloys Corporation, comprising Thirty Thousand (30,000) shares, and will have the present Directors and Officers resign to the intent that the Vanadium Corporation of America may replace same at its discretion.

"Said exchange shall cover and entitle the party of the second part to all the assets of said United States Ferro Alloys Corporation as of December 23rd, 1924, including all the assets mentioned herein and all the shares of stock in any subsidiary or subsidiaries owned by said United States Ferro Alloys Corporation or in which the Corporation has an interest.

"The said Vanadium Corporation of America shall or does hereby exchange, transfer, and deliver to said Parker Sloane as aforesaid, 66,666⅔ shares of the stock of said Vanadium Corporation of America, each share being of no par value.

"The said Vanadium Corporation of America hereby causes to be issued and delivered to said Parker Sloane valid bonds to the amount of One Million, One Hundred Sixty-one Thousand One Hundred Eighty-four Dollars and Fifty Cents ($1,161,184.50) each for One Thousand ($1,000.00) Dollars, except one bond for One Hundred Eighty-four Dollars and Fifty Cents ($184.50), bear-
108 ing interest at 6% payable January 1st and July 1st of each year, and the said principal being payable as follows:

$161,184.50	February	1, 1925
150,000.00	January	1, 1926
150,000.00	"	1, 1927
150,000.00	"	1, 1928
150,000.00	"	1, 1929
150,000.00	"	1, 1930
150,000.00	"	1, 1931
100,000.00	"	1, 1932
$1,161,184.50		

said bonds to be secured by a Trust Mortgage or deed on the entire plant, property, and equipment of the United States Ferro Alloys Corporation at Niagara Falls, New York, and the payment of the principal and interest of said bonds to be duly and properly guaranteed by said Vanadium Corporation of America. Said mortgage and bonds shall provide that they are to have no voting power, and

shall be preferred over all present or future stock issues of said United States Ferro Alloys Corporation, and in dissolution, liquidation, merger, and distribution of dividends and assets. Besides the usual default clauses, there shall be provided a default clause to the effect that the Vanadium Corporation of America shall always have on hand for the use of the Niagara Falls Plant or in good faith contracted for in advance, at least sixty (60) days' supply of such materials and products as may be necessary and sufficient to
109 employ the power now under contract with the Niagara Falls Power Company, together with the usual provisions in a mortgage of this character, which shall be approved by said Parker Sloane or his Counsel representing him in this transaction, including an insurance clause, a clause to provide for the privilege of payment of part or all of the principal remaining due at any time on 90 days notice, and a clause to the effect that the machinery, equipment and buildings, and entire plant shall be kept in good order and repair, to the intent that there shall be no deterioration of the value or productive capacity of said plant, and that all taxes, water rates, assessments, and government charges shall be properly paid and discharged; said Trust Mortgage shall be deposited in escrow with Guaranty Trust Company. Said bonds shall further provide that in case the holder thereof desires to part with the possession of any of said bonds, they will first be offered to the party of the second part at par and accrued interest, and the party of the second part has the option to accept or reject said offer within ten days.

"The Vanadium Corporation of America further agrees that upon the receipt of the Thirty Thousand (30,000) shares of the United States Ferro Alloys Corporation stock aforesaid that it will immediately forthwith pay or cause to be paid in cash, Two Hundred Ninety-eight Thousand Eight Hundred and Fifteen Dollars and Fifty Cents ($298,815.50) as directed by Parker Sloane,
110 to the holders of certain obligations in the form of chrome contracts and representing moneys heretofore advanced to said United States Ferro Alloys Corporation, and upon the further production by said Parker Sloane or other person, of proper assignment or cancellation or under or by his direction of certain obligations amounting to Forty Thousand Dollars ($40,000.00) claimed to be due to the Niagara Falls Power Company by the said United States Ferro Alloys Corporation, that thereupon the Vanadium Corporation of America will forthwith immediately pay the said Parker Sloane or as directed by him said sum of Forty Thousand ($40,000.00) Dollars."

Pursuant to the terms of the contract the parties agreed that it should be fully performed and carried out at noon on December 19, 1924, at which time all the shares of Ferro Alloys, including all shares of its subsidiary corporation, duly endorsed and assigned to the party of the second part together with the resignation of the officers and directors of each corporation should be delivered to the

Vanadium Co. and that the Vanadium Co. should thereupon place 66,666⅔ shares of its stock in escrow with Guaranty Trust Co. and should duly deliver to Ferro Alloys the bonds hereinbefore described and immediately pay the amounts it had "assumed to pay" under the provisions of Article I of the agreement.

The agreement provides for a complete audit of the business, properties, and profits of Ferro Alloys, and the parties agreed that the escrow deposit with the Guaranty Trust Co. should be
111 dissolved on January 1, 1926, and that the exact number of shares of Vanadium Co. to be then delivered to Sloane for himself and the other parties entitled thereto should be determined on the basis of the earning power of Ferro Alloys demonstrated during 1925.

By a supplemental agreement dated December 18, 1924, entered into by the parties to the original agreement, the amount of its stock which the Vanadium Co. was to "exchange, transfer and deliver" to Sloane as trustee was reduced to 33,333⅓ shares.

The stock of Vanadium Co. was of no par value and for the purposes of the agreement its value was fixed at $30 per share.

The contract was duly executed in accordance with its terms, but as a result of the demonstrated earning power of Ferro Alloys during the year 1925, only 32,103 shares of the stock of the Vanadium Co. were delivered to Sloane for himself and the other persons entitled thereto upon the dissolution of the escrow with the Guaranty Trust Co.

Sloane was a member of the Executive Committee of Vanadium.

On July 2, 1928, a certificate of dissolution of Ferro Alloys was filed in the office of the Secretary of State of the State of New York.

Counsel for the parties at the hearing before the Board, stipulated that the petitioners did not receive taxable income or profit from the payment of the obligations of Ferro Alloys to Mrs. Higham and the Niagara Falls Power Company by Vanadium in the amount of $338,815.50; and that the only issue in these cases is whether
112 the transaction in which Vanadium acquired the stock of Ferro Alloys from its stockholders was a taxable transaction for them, they being the petitioners herein.

* * * * * * *

It is hereby stipulated and agreed that the above and foregoing statement of evidence (together with all Exhibits contained in the record) contains all the evidence introduced before the United States Board of Tax Appeals material to a consideration of the petitions to the Circuit Court of Appeals for a review of the decisions entered herein by the United States Board of Tax Appeals. It is further stipulated and agreed that said statement as made may be approved by the United States Board of Tax Appeals without further notice to any party hereto and that when approved said statement of evidence may be filed in the office of the Clerk and

become a part of the record for the purpose of the petitions for review herein.

(Signed) JAMES P. QUIGLEY,
JAMES P. QUIGLEY,
Attorney of record for Parker Sloane and Hugh C. Sicard.
(Signed) JOHN F. McCABE,
JOHN F. McCABE,
Attorney of record for John J. Watts.
ROBERT H. JACKSON,
General Counsel, Bureau of Internal Revenue.

Approved and ordered filed May 21, 1934.

(Signed) ERNEST H. VAN FOSSAN,
Member of Board.

113 *Petitioner's Exhibit No. 1*

This agreement, made by and between Parker Sloane, individually and as Trustee, residing at #8 East 62nd Street, New York City, as party of the first part, and Vanadium Corporation of America, a corporation organized under the laws of the State of Delaware, having its office at No. 120 Broadway, New York City, party of the second part.

Whereas, the said Parker Sloane, individually and as Trustee, owns and controls all the outstanding issued shares of the capital stock of United States Ferro Alloys Corporation, a corporation organized under the laws of New York State, and having its principal office at New York City, and states that he is able to deliver to the party of the second part all the certificates of stock duly endorsed, of the said Corporation representing the entire interest in the assets of said Corporation; and

Whereas, the said Parker Sloane states that he is able to deliver to the party of the second part all the shares of stock of all the subsidiary corporations owned by said United States Ferro Alloys Corporation or in which it has any interest; and

Whereas, the said Parker Sloane states and represents that the assets of the said United States Ferro Alloys Corporation consists of the following:

1. Upwards of thirty (30) acres of land more or less situated at Niagara Falls, New York, with the buildings, plant, machinery, equipment, and supplies, raw and finished, thereon and used in connection therewith.

114

2. A certain lease submitted herewith, dated October 18th, 1920, of certain silica or sandstone quarries situated at Lewiston, County of Niagara, State of New York, the said lease having been made by Mountainside Realty and Quarry Company to David Dick, Jr., and having been duly assigned by intermediate assignments to said United States Ferro Alloys Corporation; the term of said lease having commenced on June 1st, 1920, and ending on the 31st day

of May 1930; the yearly rental and tonnage charges being as specified in said lease and the assignment thereof; and the said party of the first part agreeing to make every effort (without covenant on his part) to effect a renewal of said lease for the further period of ten years, or until the 31st day of May 1940, or such other time as he may secure.

3. Contract between United States Ferro Alloys Corporation and The Niagara Falls Power Company, dated May 6th, 1919, covering the electrical power therein defined; expiring on the 31st day of December 1929, said contract, however, being subject to a renewal term of ten years or until the 31st day of December 1939, as shown on original contract submitted herewith.

4. Contract between United States Ferro Alloys Corpora-
115 tion and The Niagara Falls Power Company, dated the 1st day of December 1922, covering the electrical power therein defined; said contract expiring on the 1st day of January 1940, as shown on original contract submitted herewith.

5. Certain processes and patents more specifically described in Schedule A, hereto and made a part hereof.

6. A certain contract, dated the 14th day of June 1924, made by and between Colonial Chrome Company, Limited, and The African Chromite Corporation, Limited, of Johannesburg, South Africa, covering the supply of chrome ore; said contract expiring on the 31st day of December 1925, and being submitted herewith.

7. All outstanding and issued shares of the stock of the Colonial Chrome Company, Limited, owning a certain plant, real estate, lands, and mine at Black Lake in the Province of Quebec, Canada, said shares representing the entire ownership of the said plant and premises.

8. All the other contracts of said United States Ferro Alloys Corporation not herein specifically described; and

Whereas, the negotiations culminating in this agreement have been predicated upon the financial statement of the United States Ferro Alloys Corporation as of the 31st day of May 1924, set
116 forth on a statement form of the Federal Reserve Bank of New York, which statement shows a net worth of the corporation of $3,477,575.80 being the difference between the assets amounting to a total of $3,648,857.07 which includes property and equipment of Niagara Falls plant Lewiston Quarries, Black Lake mine and mill, patents, processes, etc., all of which are hereby accepted at values shown on Corporation's Books; and a total of liabilities amounting to $171,281.27; a photostatic copy of said statement is hereto annexed, is marked Exhibit "B" and is made a part hereof as if fully set forth herein; said net worth, however, includes the sum of $338,815.50, which represents advances on chrome contracts of $298,815.50 and $40,000 due for unused power, and which is being paid and cancelled as herein provided.

Whereas, the said Parker Sloane further states—

That the net earnings of the said United States Ferro Alloys Corporation for the year 1923 as shown on their statement duly submitted or attached hereto amounted to	$141,453.32
And as per statement, amortization of Patents was	88,235.29
And as per statement, Royalties on Patents were	36,000.00
And as per statement, interest paid	17,646.67
And as per statement, depreciations were	70,347.52
And as per statement, repairs were	70,252.94
That the total thereof is	$423,925.74

Whereas, said Parker Sloane states and represents that the
117 liabilities of the said United States Ferro Alloys Corporation on the 4th day of December 1924 amount approximately to not more than $255,000.00 for materials delivered, labor, expenses and accruals, etc., payment of which, in case this contract is closed and performed, is assumed by party of the second part and will be paid out of current assets of said United States Ferro Alloys Corporation, but exclusive of $338,815.50 which amount is being paid and satisfied as hereinafter provided; and also:

1. Current accounts at the plant at Niagara Falls are approximately provided for above.

2. Accounts payable on the part of the Colonial Chrome Company, Limited, amounting approximately to $500.00.

3. A certain suit brought by Electro Metallurgical Corporation against said United States Ferro Alloys Corporation which suit is pending in the United States District Court for the Southern District; or other possible infringement suits for the period up to the date hereof.

4. A certain action pending in the Courts of Cook County, Illinois, against said Corporation involving a total liability of not more than $6,000.00.

5. Any income tax which may be found due from said United States Ferro Alloys Corporation to the United States Government
or to the State of New York or to any other tax authority for
118 any income or other taxes due up to December 23rd, 1924; including also any tax or governmental charges which may be found due by said Colonial Chrome Company, Limited; and subject to said amounts being reduced by any like tax or charge found due against the Vanadium Corporation of America to the amount of one-seventh thereof.

Whereas, the party of the first part is willing and hereby agrees to deliver to the party of the second part a good and sufficient surety company bond in the form satisfactory to the party of the second part for such amount and such term as hereinafter set forth, to cover the said liabilities (not including said $255,000 and $338,815.50) and any other liquidated or contingent liabilities of the United States Ferro Alloys Corporation and of its subsidiary or subsidiaries existing on the 23rd day of December, 1924, payment of which is assumed by party of the first part.

Whereas, said Parker Sloane is exchanging and delivering to and with the Vanadium Corporation of America Thirty Thousand

(30,000) shares of the stock of the United States Ferro Alloys Corporation, organized under the laws of the State of New York, each of the par value of One Hundred Dollars ($100.00) and aggregating Three Million Dollars ($3,000,000.00) and being the total capital stock of said Corporation; and

Whereas, the Vanadium Corporation of America is exchanging and delivering to said Parker Sloane, Trustee for the owners of said United States Ferro Alloys Corporation stock, 66,666⅔
119 shares of the stock of the Vanadium Corporation of America, each share being without par value, together with bonds of the United States Ferro Alloys Corporation, aggregating One Million, One Hundred Sixty-one Thousand One Hundred and Eighty-four Dollars and 50/100 ($1,161,184.50) secured by a Trust Mortgage on its land and plant at Niagara Falls and guaranteed as to payment of principal and interest by the said Vanadium Corporation of America, together with an assumption of the immediate payment by the Vanadium Corporation of America of certain due obligations as hereinafter set forth.

Now, This Agreement Witnesseth:

That in consideration of One Dollar ($1.00) to each in hand paid and in consideration of the premises and other good and valuable consideration, the parties covenant and agree to and with each other as follows:

I

That the parties hereto do hereby fix the following as a complete understanding and agreement as to the terms and conditions of said exchange. The said Parker Sloane shall or does hereby exchange, transfer, and deliver to the said Vanadium Corporation of America, all the issued and outstanding stock of the United States Ferro Alloys Corporation, comprising Thirty Thousand (30,000) shares and will have the present Directors and Officers resign to the intent that the Vanadium Corporation of America may replace same at its discretion.

120 Said exchange shall cover and entitle the party of the second part to all the assets of the said United States Ferro Alloys Corporation as of December 23rd, 1924, including all the assets mentioned herein and all the shares of stock in any subsidiary or subsidiaries owned by said United States Ferro Alloys Corporation or in which the Corporation has an interest.

The said Vanadium Corporation of America shall or does hereby exchange, transfer, and deliver to said Parker Sloane as aforesaid, 66,666⅔ shares of the stock of said Vanadium Corporation of America, each share being of no par value.

The said Vanadium Corporation of America hereby causes to be issued and delivered to said Parker Sloane valid bonds to the amount of One Million One Hundred Sixty-one Thousand One hundred Eighty-four Dollars and Fifty Cents ($1,161,184.50) each for One Thousand ($1,000.00) Dollars except one bond for One hundred

Eighty-four Dollars and Fifty Cents ($184.50) bearing interest at 6% payable January 1st and July 1st of each year, and the said principal being payable as follows:

$161,184.50	February 1, 1925
150,000.00	January 1, 1926
150,000.00	" " 1927
150,000.00	" " 1928
150,000.00	" " 1929
150,000.00	" " 1930
150,000.00	" " 1931
150,000.00	" " 1932
1,161,184.50	

121 said bonds to be secured by a Trust Mortgage or deed on the entire plant, property and equipment of the United States Ferro Alloys Corporation at Niagara Falls, New York, and the payment of the principal and interest of said bonds to be duly and properly guaranteed by said Vanadium Corporation of America. Said mortgage and bonds shall provide that they are to have no voting power, and shall be preferred over all present or future stock issues of said United States Ferro Alloys Corporation, and in dissolution, liquidation, merger and distribution of dividends and assets. Besides the usual default clauses, there shall be provided a default clause to the effect that the Vanadium Corporation of America shall always have on hand for the use of the Niagara Falls Plant or in good faith contracted for in advance, at least sixty (60) days' supply of such materials and products as may be necessary and sufficient to employ the power now under contract with The Niagara Falls Power Company, together with the usual provisions in a mortgage of this character, which shall be approved by said Parker Sloane or his Counsel representing him in this transaction, including an insurance clause, a clause to provide for the privilege of payment of part or all of the principal remaining at any time on 90 days' notice, and a clause to the effect that the machinery, equipment and buildings, and entire plant shall be kept in good order and repair, to the intent that there shall be no deterioration of the value or productive capacity of said plant, and that all taxes, water rates, assessments and government charges shall be properly paid and discharged; said Trust Mortgage shall
122 be deposited in escrow with Guaranty Trust Company. Said bonds shall further provide that in case the holder thereof desires to part with the possession of any of said bonds, they will first be offered to the party of the second part at par and accrued interest and the party of the second part has the option to accept or reject said offer within ten days.

The Vanadium Corporation of America further agrees that upon the receipt of the Thirty Thousand (30,000) shares of the United States Ferro Alloys Corporation stock aforesaid that it will immediately forthwith pay or cause to be paid in cash, Two Hundred Ninety-eight Thousand Eight Hundred and Fifteen Dollars and

Fifty Cents ($298,815.50) as directed by Parker Sloane, to the holders of certain obligations in the form of chrome contracts and representing moneys heretofore advanced to said United States Ferro Alloys Corporation, and upon the further production by said Parker Sloane or other person, of proper assignment or cancellation or under or by his direction of certain obligations amounting to Forty Thousand Dollars ($40,000.00) claimed to be due to the Niagara Falls Power Company by the said United United States Ferro Alloys Corporation, that thereupon the Vanadium Corporation of America will forthwith immediately pay the said Parker Sloane or as directed by him said sum of Forty Thousand Dollars ($40,000.00).

II

The parties hereto agree that this contract shall be carried out and fully performed at the office of the party of the second part, 120 Broadway, New York City, on the 23rd day of December, 1924, at 12 noon, at which time and place, all shares of United States Ferro Alloys Corporation including all shares of the subsidiary corporation, duly endorsed and assigned to the party of the second part, together with the resignations of the officers and directors of said Corporations, shall be duly delivered to the party of the second part by said party of the first part; and the party of the second part shall place in escrow with the Guaranty Trust Company as herein provided, 66,666⅔ shares of the Vanadium Corporation and duly deliver to the party of the first part the bonds, and deposit the Trust Mortgage in escrow as herein set forth, and at the same time and place immediately pay in cash, to the persons designated and in manner provided by said Parker Sloane, the amounts that said party of the second part therein assumed to pay, and each party shall fulfil and perform in good faith all the conditions and provisions of this contract.

123

The parties hereto further agree that said exchange as above set forth when completed shall be a final and completed transaction in all respects and that as provided herein, to wit: on January 1st, 1926, the said 66,666⅔ shares of the Vanadium Corporation of America stock, placed in escrow as aforesaid, less any deduction for profits of 1925 as herein set forth, shall be absolutely forthwith immediately then delivered on said date to the party of the first part, and the party of the second part hereby covenants and agrees that it will not take any action or make any claim or demand that may arise from any matter connected with this exchange or otherwise, that could or might in any manner prevent or postpone the said delivery of said stock upon said date and does further agree and covenant to take any and all action that may be necessary on its part to have the said Guaranty Trust Co. deliver said stock to the party of the first part on said January 1st, 1926, as aforesaid.

124

Provided, however, that the carrying out and closing of said contract as above set forth shall be subject to the following provisions, viz:

The statement of the United States Ferro Alloys Corporation for the year 1923, herewith sumbitted, as prepared by the Brooks Audit Company of 74 Wall Street, New York City, among other things, makes findings, as follows, viz:

Net earnings for the year 1923	$141,453.32
Amortization of Patents	88,235.29
Royalties on Patents	36,000.00
Interest Payments	17,646.67
Depreciation	70,347.52
Repairs	70,242.94
Total	$423,925.74

and for the purpose of verification, by an examination made in good faith, party of the first part agrees that the party of the second part, at its own expense, by its Auditors, Touche, Nieven & Company of 80 Maiden Lane, New York City, shall immediately make an audit of said 1923 statement as to said findings under the following conditions: (the party of the first part agreeing that the United States Ferro Alloys Corporation will afford said
125 Touche, Nieven & Company the fullest facility and opportunity to examine the books, papers, and accounts thereof and will cooperate in all respects by its officers and auditors in said examination).

1. The party of the second part shall immediately place in escrow with the Guaranty Trust Company of 140 Broadway, New York City, ten thousand shares (10,000) of stock of the Vanadium Corporation of America to be disposed of as hereinafter provided.

2. That Touche, Nieven & Company shall immediately make said audit and complete and report on same within ten days, and if said Touche, Nieven & Company or a third auditor appointed as hereinafter described, approves said findings of said statement of 1923 as approximately correct, then said ten thousand (10,000) shares of Vanadium Corporation stock are to be delivered by said Guaranty Trust Company to the party of the first part, as a credit on the 66,666⅔ shares of like stock hereinbefore referred to, at the time and place set in this contract for delivery thereof, and if the contract is fully carried out by said parties, then said ten thousand shares are to be placed in escrow as part of said 66,666⅔ shares.

3. If said Touche, Nieven & Company substantially disapproves as incorrect all or any part of said findings of 1923 statement as above set forth, then said findings of said statement of 1923 shall be immediately reaudited by a third auditor, forthwith appointed jointly by both parties hereto at the joint expense and under the
126 joint instructions of both parties whose decision as to findings shall be final in all respects.

4. If said third auditor substantially disapproves as incorrect all or any part of the findings of the Brooks Audit Company, then the

Guaranty Trust Company shall forthwith without further notice, return said ten thousand (10,000) shares of stock to the party of the second part.

5. Upon said return as provided in paragraph 4, all obligations of either or both of said parties herein to further perform or continue this agreement are hereby waived, terminated and cancelled, without any claim, cost or expense as to either party against the other.

If said findings of said 1923 statement are approved, then said contract is to be performed and carried out in all respects as above set forth, Provided Further that at least ten (10) days before the time set for closing herein, the party of the first part shall produce the following documents and papers as hereinafter set forth, viz:

1. An abstract of title with searches made by the Niagara Guarantee Search Company of Lockport, New York, together with a certificate of title made by Cohn, Chormann & Franchot, Attorneys of Niagara Falls, New York, shall be produced and delivered to the party of the second part or his attorney, showing the absolute ownership in fee simple by the United States Ferro Alloys Corporation free and clear of all encumbrances of certain real estate com-
127 prising thirty (30) acres more or less upon which are erected buildings and plant, machinery, materials and supplies, raw and finished, situate at Niagara Falls, New York, used in connection with said plant and the deeds of which have been duly submitted or attached hereto; and the party of the first part hereby warrants that the United States Ferro Alloys Corporation owns said property as aforesaid.

2. The submission to the party of the second part or its counsel of all the proceedings conducted by the firm of Galipeaut, St. Laurant, Metayer, Gagne & Devlin, attorneys of the City of Quebec, which resulted in the ownership by the United States Ferro Alloys Corporation or of their subsidiary in and to the mining properties situate at Black Lake, Province of Quebec in compliance with and in such manner as are provided by the mining laws of the Province of Quebec, or Dominion of Canada, and upon which is erected a chrome concentrating plant, and that the same are free and clear from all encumbrances.

3. A surety bond for the amount of $200,000 to run for one year; and for three years thereafter, for such reduced or such increased amount, which latter increase shall not exceed 50% of the aforesaid sum, as party of the second part elects, shall be given to the party of the second part executed by a good and sufficient surety company in form satisfactory to the party of the second part to cover the said liabilities of the United States Ferro Alloys Corporation above men-
tioned (excepting said liabilities of $255,000, referred to on
128 page 4 herein, payment of which in case this contract is closed and performed is assumed by the party of the second part and will be paid out of current assets of said United States Ferro Alloys Corporation, and excepting said liabilities of

$338,815.50 payment of which is assumed and paid in cash by party of the second part as set forth herein) and any other liquidated or contingent liabilities of said corporation and of its subsidiary or subsidiaries existing on the 23rd day of December, 1924, payment of which liabilities with the exception of said excepted liabilities is assumed by party of the first part.

4. Satisfactory proof showing that the electrical contracts of the said United States Ferro Alloys Corporation with The Niagara Falls Power Company entitle and will for the period of the contracts entitle the said corporation to electric current sufficient to enable said corporation to produce a minimum total of 21,000 tons of Ferro Silicon, Ferro Chrome and Silico manganese annually.

5. Satisfactory proof that the financial condition of the United States Ferro Alloys Corporation on the 4th day of December, 1924, was substantially as satisfactory from the standpoint of net worth as its financial condition shown in Exhibit B (and as expressed on page 3) which is hereto annexed, subject to the usual interim depreciation, obsolescence and amortization, and the party of the first part agrees that there shall be no material change in the financial condition of the United States Ferro Alloys Corporation between said date and date of closing.

129 IV

It is Further Provided that all of the stock of the Vanadium Corporation of America, to wit, 66,666⅔ shares, each share being without part value, shall be placed in escrow in the Guaranty Trust Company of New York, 140 Broadway, Borough of Manhattan, City of New York, for the period of one year from December 31, 1924. If the net earnings of the United States Ferro Alloys Corporation for the year 1925 (such net earnings to be fixed by computing the ratio that the total cost of manufacture of this Corporation's products for the year 1923 bears to a contemplated profit of $322,000.00 to the intent that said ratio shall be applied to the cost of manufacture for the year 1925 to determine the profits therein made, should said ratio cost of manufacture be exceeded in 1925, except that there shall be added to the cost of manufacture any bona fide increase in cost entering into the raw materials or power necessary to manufacture the 1925 products), as determined by an accountant selected by the party of the first part and an accountant selected by the party of the second part, and, in case of disagreement, as determined by a third accountant selected by both the party of the first and second parts whose decision shall be final, do not amount to a minimum of $400,000.00 for said year 1925, then the amount of stock of Vanadium Corporation of America so placed in escrow as aforesaid, shall be reduced by an amount equalling the difference between the amount earned as above determined and the said
130 minimum earnings of $400,000.00, and sufficient shares at the

rate of Thirty Dollars ($30.00) per share shall belong to and be taken by and delivered to said Vanadium Corporation of America as and for its property and the balance of said stock so placed in escrow shall thereupon be forthwith delivered by the Guaranty Trust Company to the party of the first part.

V

The party of the first part further undertakes to transfer and deliver to the party of the second part good and sufficient assignments assigning to the party of the second part or to its assignee, as the party of the second part may designate, any and all patents, letters patent or applications for letters patent owned by the United States Ferro Alloys Corporation or in which it has any interest and will cause to be assigned to the party of the second part or to its designated assignee any future developments over which he has control of the same subject matter or of any continuation or divisional application of the same.

The party of the first part in consideration of the exchange of the said stock, further agrees freely to give as a Director and member of Executive Committee of party of the second part, his best services and efforts to and for the benefit of said party of the second part and of the said United States Ferro Alloys Corporation.

The party of the second part hereby gives the party of the first part, at the time of closing this contract, the right and option of receiving the delivery of ten thousand (10,000) shares of said
131 total of 66,666⅔ shares of Vanadium Corporation of America stock, free from the necessity of depositing same in escrow with the Guaranty Trust Company, as herein set forth, PROVIDED that said ten thousand (10,000) shares of said stock shall be forthwith deposited by the party of the first part with the Surety Company, giving the bond contemplated herein as collateral security thereto, for a period of at least one year from January 1st, 1925.

It is expressly understood and agreed that the fact that the party of the first part is acting as Trustee as well as individually does not impose any obligation on the party of the second part to inquire concerning the terms of said Trust and does not obligate the party of the second part to recognize any one other than the Trustee or to have any duty with respect to the application of any trust property by the Trustee.

This agreement shall bind the successors, administrators, executors and assigns of the parties hereto.

In Witness Whereof, the said party of the first part has hereunto duly set his hand and seal and the said party of the second part has duly executed this instrument by its proper officer and has hereunto affixed its corporate seal on the 6th day of December, 1924.

[SEAL] PARKER SLOANE [L. S.]

VANADIUM CORPORATION OF AMERICA,

By A. A. COREY, JR.

132 *Petitioner's Exhibit No. 2*

This Agreement, made by and between Parker Sloane, individually and as Trustee, residing at 8 East 62nd Street, New York City, as party of the first part, and Vanadium Corporation of America, a corporation organized under the laws of the State of Delaware, having its office at No. 120 Broadway, New York City, party of the second part:

Witnesseth:

The parties hereto in consideration of One Dollar ($1.00) and for other good and valuable consideration, the receipt whereof is hereby acknowledged, hereby covenant and agree as follows:

The agreement between the parties dated December 6th, 1924, is hereby modified and amended as follows:

1. Instead of 66,666⅔ shares of the stock of the Vanadium Corporation of America mentioned in said agreement, the Vanadium Corporation of America will on the day of closing exchange, transfer and deliver to Parker Sloane, as trustee, and in the manner in said agreement provided, 33,333⅓ shares of said stock of the Vanadium Corporation of America. The 10,000 shares of said stock heretofore on December 9th, 1924, delivered to the Guaranty Trust Company in escrow, shall be deemed a part of said total of 33,333⅓ shares of said stock.

2. In said agreement dated December 6th, 1924, any and all
133 references to 66,666⅔ shares of said stock of the Vanadium Corporation of American are hereby changed to 33,333⅓ shares of said stock, and 33,333⅓ shares shall be substituted and deemed inserted in place of said 66,666⅔ shares wherever the latter figure is used in said agreement.

3. The words "all of which are hereby accepted at values shown on Corporation's books" on page 3 of said agreement, shall be and are hereby deemed stricken from said agreement dated December 6th, 1924.

4. With reference to Article III on pages 10, 10a, 11, 12, 13, and 14 of said agreement of December 6th, 1924:

(a) The Auditors, Touche, Niven & Company have reported, but no third auditor shall be appointed, and no reauditing of the statement for 1923 by a third auditor shall be required;

(b) The party of the first part may produce the complete papers referred to in Subdivision 2 of said Article II on pages 12 and 13 of said agreement at any time prior to the closing; and

(c) The surety bond referred to in Subdivision 3 of said Article II on page 13 of said agreement may be produced and delivered to the party of the second part on the day of closing; and

(d) Subdivision 5 of said Article II on page 14 of said agreement is stricken out.

134 5. Article IV on pages 14 and 15 of said agreement is stricken out.

6. If the difference between the current assets and current liabilities of the United States Ferro Alloys Corporation on the day of closing amounts to less than Six Hundred and Fifty Thousand Dollars ($650,000.00), such difference shall be made up and allowed by the party of the first part to the party of the second part out of the stock of the Vanadium Corporation of America held in escrow by the Guaranty Trust Company at the rate of Thirty Dollars ($30.00) per share. The party of the second part shall notify the party of the first part on or before June 1st, 1925, whether said difference between current assets and current liabilities on the day of closing was more or less than Six Hundred Fifty Thousand Dollars ($650,000.00). If less than Six Hundred and Fifty Thousand Dollars ($650,000.00) the party of the second part shall set forth the amount of said difference in an affidavit sworn to by an officer of the party of the second part, and this affidavit shall be conclusive.

7. If the net earnings of the United States Ferro Alloys Corporation for the year 1925 amount to more than $300,000.00, the party of the second part will pay to the party of the first part five (5) times the difference between such net earnings and said sum of $300,000.00; provided, however, that the maximum of such
135 payment shall not exceed $500,000.00. For the purpose of determining said net earnings for the year 1925, the certified statement or report of one of the following firms of certified public accountants shall be conclusive.

Arthur Young & Co., 82 Beaver St., New York City,
Marwick, Mitchell & Co., 42 Exchange Place, New York City, or
Haskins and Sells, 30 Broad St., New York City.

8. As hereby modified, said agreement of December 6th, 1924, shall be performed at the time and place stated in said agreement or at such earlier date as may be agreed on by the parties.

In Witness Whereof, the party of the first part has hereunto set his hand and seal, and the party of the second part has caused this instrument to be executed by its duly authorized officer, and its corporate seal to be hereunto affixed, this 18th day of December 1924.

PARKER SLOANE,
Individually and as Trustee.

[SEAL] VANADIUM CORPORATION OF AMERICA,
By A. A. COREY, JR.,
President.

136 STATE OF NEW YORK,
County of New York, ss:

On this 18th day of December 1924, before me personally appeared Parker Sloane, to me known and known to me to be one of the persons described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

JENNIE C. DALE.

STATE OF NEW YORK,
County of New York, ss:

On this 18th day of December 1924, before me personally came Alfred A. Corey, Jr., to me known, who being by me duly sworn, did depose and says that he resides in New York City; that he is the President of the Vanadium Corporation of America, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

[SEAL] JENNIE C. DALE.

137 STATE OF NEW YORK,
County of New York, City of New York, ss:

On this 9th day of December, in the year nineteen hundred and twenty-four, before me came Parker Sloane, to me known and known to me to be the individual described in and who executed the within instrument, and he duly acknowledged that he executed the same.

[SEAL] JENNIE C. DALE.

[STAMP]

3/30/25

STATE OF NEW YORK,
County of New York, City of New York, ss:

On this 9th day of December, in the year one thousand nine hundred and twenty-four, before me personally came A. A. Corey, Jr., to me known and known to me, who being by me duly sworn, did depose and say that he resides in New York City; that he is the President of the Vanadium Corporation of America, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation, and that he signed his name thereto by like order.

[SEAL] JENNIE C. DALE.

[STAMP]

3/30/25

138 *Petitioner's Exhibit No. 3*

Certificate of Incorporation of the United States Ferro Alloys Corporation

City, County, and State of New York, ss:

We, the undersigned, all of whom are of full age and citizens of the United States and residents of the State of New York, do by these presents associate ourselves to form a corporation pursuant to

and in conformity with the provisions of the Business Corporations Law, and for that purpose we do hereby certify as follows:

I. The name of the proposed corporation is the United States Ferro Alloys Corporation.

II. The purposes for which it is to be formed are to manufacture alloys and other materials and products and make purchases and sales of the same; the buying, acquiring, selling, improving, holding, transferring, exchanging, leasing, renting, and mortgaging of real property; the building, construction, selling, and alteration of buildings thereon; the making, purchasing, and selling of materials for all kinds of manufacturing and for the construction of buildings or the improvement of real estate; the acquiring, buying, holding, transferring, and selling of bonds and mortgages; the loaning of money on real estate or other property; the construction, erection, buying, selling, acquiring, leasing, improving, holding, transferring, exchanging, renting, and mortgaging factory buildings and structures
139 appertaining thereto, including power for manufacturing and business purposes, and also the equipment, machinery, and apparatus connected therewith, or necessary for manufacturing and business purposes; the acting as broker, agent, and attorney in fact for the purchase, sale, and exchange of all kinds of property for the owners thereof; and the conducting for said owners of all transactions relating to said property; and to manage and develop real and personal property; and to carry on any of the above business.

III. The amount of the capital stock shall be $500,000, divided into shares of one hundred dollars each.

IV. The number of shares of which said stock shall consist is five thousand, each of which shall be of the amount of one hundred dollars, and the amount of capital with which said corporation shall commence business is Five thousand Dollars.

V. The principal business office shall be located in the Borough of Manhattan, County of New York, City of New York.

VI. Its duration shall be one hundred years.

VII. The number of Directors shall be three.

VIII. The names and post office addresses of the Directors for the first year are as follows:

Walter Brower, 60 Beaver Street, New York City.
Julius Siegelman, 915 St. Marks Avenue, New York City.
John W. Fraser, Garden City, New York.

140 IX. The names and post office addresses of the subscribers and the amount of shares which each agrees to take in said corporation, are as follows:

Walter Brower, 60 Beaver St., New York City, 200 shares.
Julius Siegelman, 915 St. Marks Ave., N. Y. City, 200 shares.
John W. Fraser, Garden City, New York, 200 shares.

X. The directors need not be stockholders of the corporation.

STATE OF NEW YORK,
Department of State, ss:

I Certify That I have compared the preceding copy with the original Certificate of Incorporation of United States Ferro Alloys Corporation, filed in this department on the 22nd day of January 1919, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State at the City of Albany, this twenty-third day of February, one thousand nine hundred and thirty-two.

[SEAL] FRANK S. SHARP,
Deputy Secretary of State.

141 In Witness Whereof, we have made, signed, acknowledged, and accepted this certificate in duplicate, this 20th day of January 1919.

WALTER BROWER.
JULIUS SIEGELMAN.

City, County, and State of New York, ss:

On this 20th day of January, in the year One thousand nine hundred and nineteen, before me personally came Walter Brower, Julius Siegelman, and John W. Fraser, to me known, and known to me to be the individuals described in and who executed the foregoing certificate, and they severally duly acknowledged to me that they executed the same.

[SEAL] B. F. GOETSCHIUS,
Commissioner of Deeds, City of New York.

New York County, Clerk's No. 323.
My term expires November 20, 1919.

142 Book 703, Page 836

Certificate of Incorporation of the United States Ferro Alloys Corporation (by consent).

Tax for privilege of organization of this Corporation, 250—Under Section 180, Chapter 62, Laws of 1909, as Amended; Paid to State Treasurer before Filing.

STATE OF NEW YORK,
OFFICE OF SECRETARY OF STATE.

Filed and recorded Jan. 22, 1919.

FRANCIS G. H. HUGO,
Secretary of State.
JULIUS SIEGELMAN,
887 Manhattan Ave., Brooklyn.

143 *Petitioner's Exhibit No. 4*

No. 53395, Series B

STATE OF NEW YORK,
COUNTY OF NEW YORK,
City of New York, ss:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, Do Hereby Certify That said Court is a Court of Record, having by law a seal, that B. F. Goetschius, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a Commissioner of Deeds in and for said city and county, duly commissioned and sworn, and qualified to act as such; that as such Commissioner of Deeds he was duly authorized by the laws of the State of New York to administer oaths and affirmations, to take affidavits and certify the acknowledgment and proof of deeds and other written instruments to be read in evidence or recorded in this state; and further that I am well acquainted with the handwriting of such Commissioner of Deeds and verily believe that his signature to such proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 23rd day of October, 1919.

[SEAL] WM. F. SCHNEIDER,
Clerk.

144 The undersigned, Stockholder of record of the United States Ferro Alloys Corporation, a stock corporation organized under the laws of the State of New York, owning the entire capital stock of said corporation issued and outstanding, hereby consents that the capital stock of the said corporation be increased from Five Hundred Thousand ($500,000.00) Dollars, consisting of five thousand (5000) shares of the par value of One Hundred ($100.00) Dollars each, to the amount of Three Million ($3,000,000.00) Dollars, to consist of Thirty thousand (30,000) shares of the same par value.

PARKER SLOANE.

Dated October 21, 1919.

Name of stockholder, Parker Sloane. Number of shares, 600.

CITY AND STATE OF NEW YORK,
County of New York:

On this 21st day of October, 1919, before me personally came Parker Sloane, to me known, and known to me to be the individual described in and who executed the foregoing instrument and did acknowledge to me that he executed the same.

B. F. GOETSCHIUS,
Commissioner of Deeds, City of New York.

Term expires November 20, 1919.

STATE OF NEW YORK,
Department of State, ss:

I Certify That I have compared the preceding copy with the
145 original Certificate to Increase the Capital Stock of United States Ferro Alloys Corporation, filed in this department on the 29th day of October, 1919, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State, at the City of Albany, this twenty-third day of February, one thousand nine hundred and thirty-two.

[SEAL] FRANK S. SHARP,
Deputy Secretary of State.

CITY AND STATE OF NEW YORK,
County of New York:

John W. Fraser, being duly sworn, deposes and says that he is Secretary and Treasurer of the United States Ferro Alloys Corporation. That he is the custodian of the stock book of said corporation, and that Parker Sloane, the person who has signed the foregoing consent in person, is the sole holder of record of the entire capital stock of said corporation issued and outstanding. That only Sixty Thousand ($60,000.00) Dollars of the original Five Hundred Thousand ($500,000.00) Dollars capital stock has been issued.

JOHN W. FRASER.

Sworn to before me this 21st day of October, 1919.

[SEAL] B. F. GOETSCHIUS,
Commissioner of Deeds, City of New York.

Term expires November 20, 1919.

146 Book —, Page —

United States Ferro Alloys Corporation, Increase of Capital Stock.

Tax for privilege of increase of capital of this Corporation, $1,250—Under Section 180, Chapter 62, Laws of 1909 As Amended; Paid to State Treasurer before Filing.

STATE OF NEW YORK,
OFFICE OF SECRETARY OF STATE.

Filed and recorded Oct. 29, 1919.

FRANCIS G. H. HUGO,
Secretary of State.

CHARLES LOUIS SICARD,
Attorney, 30 East 42nd Street, New York City, N. Y.

147 *Petitioner's Exhibit No. 5*

STATE OF NEW YORK,
County of New York, ss:

We, the undersigned, a majority of the directors of the United States Ferro Alloys Corporation, do hereby certify:

That the capital stock of said Company is Three Million ($3,000,000) Dollars and that more than one-half thereof, to wit: all or Three Million ($3,000,000) Dollars has been paid in, and that the same was issued for cash and property.

That said payment of one half or all of said capital stock was made within one year from the incorporation of said Company and within thirty days preceding the date of the execution and acknowledgment of this certificate.

In Witness Whereof we have executed this certificate this seventh day of November, 1919.

PARKER SLOANE.
HUGH C. SICARD.

No. 17915, Series B.

STATE OF NEW YORK,
COUNTY OF NEW YORK,
City of New York, ss:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, Do Hereby Certify, That said Court is a Court of Record, having by law a seal; that B. F. Goetschius, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a Commissioner of Deeds in and for said city and county, duly commissioned and sworn, and qualified to act as

148 such; that as such Commissioner of Deeds he was duly authorized by the laws of the State of New York to administer oaths and affirmations, to take affidavits, and certify the acknowledgment and proof of deeds and other written instruments to be read in evidence or recorded in this state; and further that I am well acquainted with the handwriting of such Commissioner of Deeds and verily believe that his signature to such proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 5th day of June, 1920.

[SEAL.]

WM. F. SCHNEIDER,
Clerk.

STATE OF NEW YORK,
COUNTY OF NEW YORK,
City of New York, ss:

On this seventh day of November, in the year nineteen hundred and nineteen, before me came Parker Sloane and Hugh C. Sicard to

me known, and known to me to be the individuals described in, and who executed the within instrument and they severally duly acknowledged that they executed the same.

B. F. GOETSCHIUS,
Commissioner of Deeds, City of New York,

Kings County Clerk's Number 282a; Kings County Register's Number 9056; New York County Clerk's Number 323; New York County Register's Number 19122.

Term expires November 20, 1919.

149 STATE OF NEW YORK,
Department of State, ss:

I Certify That I have compared the preceding copy with the original Certificate of Payment of Capital Stock of United States Ferro Alloys Corporation, filed in this department on the 23rd day of June 1920, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State at the City of Albany, this twenty-third day of February, one thousand nine hundred and thirty-two.

[SEAL] FRANK S. SHARP,
Deputy Secretary of State.

STATE OF NEW YORK,
County of New York, ss:

Parker Sloane and Hugh C. Sicard being respectively duly sworn, depose and say that he, the said Parker Sloane, is the President of the United States Ferro Alloys Corporation, and that he, the said Hugh C. Sicard is the Secretary thereof, and that the above certificate is true.

PARKER SLOANE.
HUGH C. SICARD.

Sworn to before me this 7th day of November 1919.

B. F. GOETSCHIUS,
Commissioner of Deed, City of New York.

150 Book —, Page —

U. S. Ferro Alloys Corporation; Certificate of Payment of Capital Stock.

STATE OF NEW YORK,
OFFICE OF SECRETARY OF STATE.

Filed and recorded Jun. 23, 1920.

FRANCIS G. H. HUGO,
Secretary of State.

CHARLES LOUIS SICARD,
Counsel,
30 East 42nd St., New York.

151 *Petitioner's Exhibit No. 6*

Certificate of Dissolution of United States Ferro Alloys Corporation

Pursuant to Article Ten of the Stock Corporation Law:

We, the undersigned, constituting the stockholders of record of all the outstanding shares of United States Ferro Alloys Corporation entitled to vote on the dissolution thereof, do hereby, pursuant to Section 105 of the Stock Corporation Law, certify as follows:

1. The name of the corporation is United States Ferro Alloys Corporation.

2. The Certificate of Incorporation of said corporation was filed in the office of the Secretary of State on the 22nd day of January 1919, and a certified copy of the Certificate of Incorporation was filed in the office of the County Clerk of New York County on the 24th day of January 1919.

3. The said corporation elects to dissolve.

4. The names and post-office addresses of its directors are as follows:

Names	Post-Office Addresses
Alfred A. Corey, Jr	120 Broadway, New York City.
Beram D. Saklatwalla	Bridgeville, Pa.
Edgar R. Alpaugh	Morris Plains, N. J.
Gustav Laub	Sound Beach, Conn.

152 5. The names, titles, and post-office addresses of the officers of the corporation are:

Names	Titles	Post-Office Addresses
Alfred A. Corey, Jr	President	120 Broadway, N. Y. C.
Beram D. Saklatwalla	Vice President	Bridgeville, Pa.
Edgar R. Alpaugh	Secretary & Treasurer	Morris Plains, N. J.
Gustav Laub	Assistant Sec'y	Sound Beach, Conn.

In Witness Whereof, we have made, subscribed, and acknowledged this certificate in duplicate this 21st day of September 1927.

ALFRED A. COREY, JR.
BERAM D. SAKLATWALLA.
EDGAR R. ALPAUGH.
GUSTAV LAUB.

Jul. 2, 1928.

The State Tax Commission hereby consents to the filing of the annexed certificate of dissolution of United States Ferro Alloys Corporation.

STATE TAX COMMISSION,
By N. W. CANFIELD,
Deputy.
G.

STATE OF NEW YORK,
Department of State, ss:

I Certify That I have compared the preceding copy with the original Certificate of Dissolution of United States Ferro
152 Alloys Corporation, filed in this department on the 2nd day of July 1928, and that such copy is a correct transcript therefrom and of the whole of such original.

Witness my hand and the official seal of the Department of State at the City of Albany, this twenty-third day of February, one thousand nine hundred and thirty-two.

[SEAL] FRANK S. SHARP,
Deputy Secretary of State.

STATE OF NEW YORK,
County of New York, ss:

On this 21st day of September 1927, before me personally came Alfred A. Corey, Jr., Beram D. Saklatwalla, Edgar R. Alpaugh and Gustav Laub, to me known and known to me to be the persons described in, who executed the foregoing certificate and severally duly acknowledged to me that they executed the same.

[SEAL] A. DELAFIELD SMITH,
Notary Public, N. Y. County.

New York County Register No. 9086; New York Co. Clerk's No. 377.

Commission expires March 30, 1929.

154 STATE OF NEW YORK,
County of New York, ss:

Alfred A. Corey, Jr., and Edgar R. Alpaugh, being severally duly sworn, do depose and say, and each for himself deposes and says that he, the said Alfred A. Corey, Jr., is the President of the United States Ferro Alloys Corporation, and he, the said Edgar R. Alpaugh, is the Secretary thereof; that the persons who have subscribed the foregoing certificate in person or by proxy constitute the holders of record of all of the outstanding shares of the above-named corporation entitled to vote on dissolution.

ALFRED A. COREY, JR.,
President.

EDGAR R. ALPAUGH,
Secretary.

Sworn to before me this 21st day of September 1927.

[SEAL] A. DELAFIELD SMITH,
Notary Public, N. Y. County.

New York County Register's No. 9086; New York Co. Clerk's No. 377.

Commission expires March 30, 1929.

155 3331 29

Certificate of Dissolution of United States Ferro Alloys Corporation.

STATE OF NEW YORK,
DEPARTMENT OF STATE.

Filed Jul. 2, 1928. Tax, None. Filing Fee, 115.

ROBERT MOSES,
Secretary of State.

By ——— ———,
Cashier.

MARTIN A. PHILLIPS,
1 Madison Ave., N. Y. City.

156 *Petitioner's Exhibit No. 7*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, Apr. 20, 1926.

Address reply to Commissioner of Internal Revenue and Refer to—

IT:CR:E.
EFC.

UNITED STATES FERRO ALLOYS CORPORATION,
c/o Lawrence P. Mattingly,
120 Broadway, New York, N. Y.

SIRS: An examination of your income-tax returns for 1922, 1923, and 1924, in connection with a Revenue Agent's report dated March 24, 1925, discloses an aggregate deficiency of $43,363.08, as outlined on the attached statement and accompanying schedules.

It is observed that you have signed an agreement consenting to the assessment of the deficiency of $43,363.08. Therefore, the assessment of the above-stated amount will be entered on the next list; but payment should not be made until you have received notice
157 and demand from the Collector of Internal Revenue for your district, and payment should then be made to him.

Respectfully,

D. H. BLAIR,
Commissioner.

By C. R. NASH,
Assistant to the Commissioner.

Enclosures.
Statement.
Schedules 1, 2, and 3.
Form 882.

IT:CR:E.
EFC.

STATEMENT OF RETURNS EXAMINED AND RESULTING TAX LIABILITY

Returns examined

Company—United States Ferro Alloys Corporation, New York, N. Y.:

Year:	Form
1922	1120
1923	1120
1924	1120

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Tax liability

Company—United States Ferro Alloys Corporation, New York, N. Y.:

Year:	Tax due
1922	$18,211.19
1923	18,364.09
1924	6,787.80
Total deficiency	$43,363.08

Revenue Agent's report dated March 24, 1925, a copy of which has been furnished you, has been accepted as submitted.

UNITED STATES FERRO ALLOYS CORPORATION

Year ended December 31, 1922

SCHEDULE 1

Computation of Tax, 1922 Rates—Excess Profits Tax.

Income tax

Net income taxable year, as shown in agent's report dated March 24, 1925	$145,689.52
Less:	
Taxable at 12½%	145,689.52
Income Tax	18,211.19
Previously assessed	None.
Tax to be assessed	18,211.19

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Year ended December 31, 1923

SCHEDULE 2

Computation of Tax, 1923 Rates—Excess Profits Tax.

Income tax

Net income taxable year, as shown in agent's report dated March 24, 1925	$261,318.13
Taxable at 12½%	261,318.13
Income tax	32,664.77
Previously assessed	14,300.68
Additional to be assessed	$18,364.09

UNITED STATES FERRO ALLOYS CORPORATION

Year ended December 31, 1924

SCHEDULE 3

Computation of Tax, 1924 Rates—Excess Profits Tax.

Net income taxable year, agent's report dated March 24, 1925	$54,302.39
Taxable at 12½%	54,302.39
Income tax	6,787.80
Previously assessed	None.
Tax to be assessed	6,787.80

160 *Petitioner's Exhibit No. 8*

TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE,
OFFICE OF INTERNAL REVENUE AGENT IN CHARGE, ROOM 431,
April 14, 1925.

In re: United States Ferro Alloys Corp.—old add., 41 East 42nd St.; 120 Bway, % Lawrence P. Mattingly, N. Y. City.
Date of Report: March 24, 1925.
Years examined: 1922 to 1924 incl.
SIEGFRIED LOEWENTHAL,
PERRY F. JACOBS,

Add'l Tax Due—$43,363.08

GENTLEMEN: There is transmitted herewith copy of a report covering examination recently made by a representative of this office covering your income tax liability, and a form of agreement which, if the adjustments suggested are satisfactory to you, you may sign and return to this office. The agreement, however, until approved by the Commissioner, upon a review of the examining officer's report in Washington, is not binding. In the event the report is not approved upon review in Washington and there are material changes, you will be given the benefit of due notice and afforded an opportunity to discuss the changes with this office.

161 If you do not agree with the conclusions stated in the report, it is desired that every opportunity be afforded you to present any objections or additional information which you believe might affect the result of the final decision of the Commissioner of Internal Revenue at Washington, D. C. The original of this report will, therefore, be held in this office for a period not to exceed twenty days from the date of this letter in order that you may, if you so desire, present any protests, briefs, or letters containing additional information. Such protests, briefs, or letters should be forwarded in triplicate to this office, where they will receive careful consideration before the report with all papers pertaining thereto is transmitted to the Department at Washington for final action. If you agree to the findings of the examining officer the report will be forwarded at once. In the event that you do not submit protest or brief within the twenty-day period, the report will immediately thereafter be forwarded to the Bureau. However, any appeal, protest, or additional information affecting the inclosed report should be directed to this office and not to the Bureau at Washington. If forwarded to the Bureau direct, it will be referred to this office for appropriate consideration.

No remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail.

Respectfully,

C. M. JUSTICE,
Internal Revenue Agent in Charge.

M. Mc.

162 United States Ferro Alloys Corp. #1

SCHEDULE #1.—*Year ended 12/31/22*

	Per books	Unallowable deduction and addition to taxable income	Nontaxable income and other allowable deduction	Amended
Sales	$1,869,270.85			$1,869,270.85
Interest on notes, etc	5,144.88			5,144.88
Rents	1,190.00			1,190.00
Profit on sale of assets	2,143.23			2,143.23
Other income	47.50			47.50
	1,877,796.46			1,877,796.46
Inventory Jan. 1, 1922	266,690.75			266,690.75
Labor, material, etc	1,514,366.23			1,514,366.23
	1,781,056.98			1,781,056.98
Inventory Jan. 1, 1923	189,865.96			189,865.96
	1,591,191.02			1,591,191.02
Rent	3,580.00			3,580.00
Repairs	57,785.44			57,785.44
Taxes	9,280.18			9,280.18
Bad debts	136.10			136.10
Depreciation	144,384.06	(a)$88,235.29	(b)$3,162.14	59,310.91
Interest	10,823.29			10,823.29
	1,817,180.09			1,732,106.94
Profit per books	60,616.37			145,689.52
	1,877,796.46	88,235.29	3,162.14	1,877,796.46

163 U. S. Ferro Alloys Corp. #2

SCHEDULE #2.—*Year ended December 31, 1923*

	Per books	Unallowable deduction and addition to taxable income	Nontaxable income and other allowable deduction	Amended
Interest on deposits	$4,235.22			$4,235.22
Sales	2,264,775.67			2,264,775.67
Rents	1,270.00			1,270.00
Miscellaneous income	305.25			305.25
	2,270,586.14			2,270,586.14
Inventory Jan. 1, 1923	189,865.96			189,865.96
Labor, material, etc	2,067,838.93	(d)$891.66		2,066,947.27
	2,257,704.89			2,256,813.23
Inventory Jan. 1, 1924	441,870.68			441,870.68
	1,815,834.21	891.66		1,814,942.55
Rent	3,699.96			3,699.96
Repairs	70,242.94			70,242.94
Interest	29,487.23			29,487.23
Taxes	10,209.22			10,209.22
Bad debts	5,076.45			5,076.45
Depreciation	158,582.81	(a)88,235.29	(b)$3,162.14	73,509.66
Royalties and patent license	36,000.00	(c)36,000.00		
Net loss			(e)2,100.00	2,100.00
Adj. Petinot Salary				
	2,129,132.82			2,009,268.01
Net income	141,453.32	125,126.95	5,262.14	261,318.13

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U. S. Ferro Alloys Corp. #3

SCHEDULE #3.—*Year ended December 20, 1924*

	Books	Unallowable deduction additions to taxable income	Nontaxable income and other allowable deductions	Amended
Miscellaneous income	$5,690.82			$5,690.82
Liability, N. Petinot released		(a)$11,250.00		11,250.00
Gross sales	1,761,946.37			1,761,946.37
	1,767,637.19			1,778,887.19
Inventory 1/1/24	441,870.68			441,870.68
Materials, labor, etc	1,595,643.66			1,595,643.66
	2,037,514.34			2,037,514.34
Inventory 12/20/24	583,540.07		(b) $12,012.37	571,527.70
	1,453,974.27			1,465,986.64
Salary, officers'	9,677.48			9,677.48
Rent	3,601.59			3,601.59
Repairs	85,389.15			85,389.15
Interest	12,839.76			12,839.76
Taxes	9,459.81			9,459.81
Depreciation	157,422.63	(c)85,784.31	(d)3,162.14	74,800.46
General expense	62,829.91			62,829.91
	1,795,194.60			1,724,584.80
Net profit	($27,557.41)			54,302.39

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U. S. Ferro Alloys Corp. #4

SCHEDULE #4.—*Computation of tax 1922 rates—year ended 12/31/92*

Excess Profits Tax:		
Net income, schedule		$145,689.52
Invested capital, Schedule		
8% of invested capital		
Plus exemption $3,000.00		
Total credit		
Tax computed under Sections 302		
Income tax:		
Net income taxable year	$145,689.52	
Less:		
Interest U. S. obligations not exempt		
Excess profits tax		
Exemption		
Balance taxable at 12½%	145,689.52	
Income tax		18,211.19
Total income and tax		18,211.19
Previously assessed		None.
Additional to be assessed		$18,211.19

H5

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U. S. Ferro Alloys Corp. #5

SCHEDULE #5.—*Computation of tax 1923 rates—year ended 12/31/23*

Excess profits tax:		
Net income, schedule		$261,318.13
Invested capital, schedule		
8% of invested capital		
Plus exemption $3,000.00		
Total		
Tax computed under Sections 302		
Income tax:		
Net income taxable year	$261,318.13	
Less:		
Interest U. S. obligations not exempt		
Excess profits tax		
Exemption		
Balance taxable at 12½%	261,318.13	
Income tax		32,664.77
Total income and excess profits tax		32,664.77
Previously assessed		14,300.68
Additional to be assessed		$18,364.09

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U. S. Ferro Alloys Corp. #6

SCHEDULE #6.—*Computation of tax 1924 rates—year ended 12/31/24*

Excess profits tax:		
Net income, schedule		$54,302.39
Invested capital, Schedule		
8% of invested capital		
Plus exemption $3,000.00		
Total credit		
Tax computed under Sections 302		
Income tax:		
Net income taxable year	$54,302.39	
Less:		
Interest U. S. obligations not exempt		
Excess profits tax		
Exemption		
Balance taxable at 12½%	54,302.39	
Income tax		6,787.80
Total income and tax		6,787.80
Previously assessed		None.
Additional to be assessed		$6,787.80

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166 **U. S. Ferro Alloys Corp. #7**

EXHIBIT "A."—*Balance Sheet, January 1, 1922*

	Books	Debit	Credit	Amended
ASSETS				
Cash	$263, 235. 94			$263, 235. 94
Accounts and notes receivable	344, 099. 21			344, 099. 21
Accrued interest	7, 083. 57			7, 083. 57
Inventory	266, 690. 75			266, 690. 75
Deferred charges	9, 626. 89			9, 626. 89
Plant, patents, etc	3, 114, 480. 61		(c)$20, 319. 35	3, 094, 161. 26
Total	4, 005, 216. 97		20, 319. 35	3, 984, 897. 62
LIABILITIES				
Notes payable	325, 000. 00			325, 000. 00
Accounts payable	150, 161. 13		(a)870. 94	151, 032. 07
Accrued and deferred liabilities	341, 129. 00			341, 129. 00
Reserve for depreciation and amortization	30, 711. 33	(c)$40, 441. 17 (d)20, 319. 35 (b)88, 235. 29		71, 715. 82
Capital stock	3, 000, 000. 00			3, 000, 000. 00
Sub. to pfd. exp. stock	49, 300. 00	(d)1, 200. 00		48, 100. 00
Surplus	(81, 084. 49)		(d)1, 200. 00 (b)88, 235. 29 (c)40, 441. 17	47, 921. 03
Total	4, 005, 216. 97	151, 066. 85	130, 747. 50	3, 984, 897. 62

EXHIBIT "A-1."—*Explanation of Items, Changed, Unchanged—Balance Sheet, January 1, 1922*

For these changes, see prior report dated May 16, 1924.

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167 **U. S. Ferro Alloys Corp. #8**

EXHIBIT "B."—*Balance Sheet, January 1, 1923*

	Books	Debit	Credit	Amended
ASSETS				
Cash	$179, 481. 89			$179, 481. 89
Notes receivable	192, 640. 20			192, 640. 20
Accounts receivable	281, 757. 79			281, 757. 79
Inventory	189, 865. 96			189, 865. 96
Stock, colonial chrome	20, 000. 00			20, 000. 00
Deferred charges	7, 138. 45			7, 138. 45
Building, equipment-patents	3, 149, 790. 80		(a)$20, 319. 35	3, 129, 471. 45
Organization expenses	10. 50			10. 50
Total	4, 020, 885. 29		20, 319. 35	4, 000, 365. 94
LIABILITIES				
Accounts payable	325, 717. 63			325, 717. 63
Notes payable	100, 000. 00			100, 000. 00
Taxes, commission expense	6, 732. 91			6, 732. 91
Subsc. to capital stock	48, 100. 00			48, 100. 00
Capital stock	3, 000, 000. 00			3, 000, 000. 00
Surplus	(20, 139. 06)	(c)$3, 162. 14	(d)88, 235. 29 (b)128, 676. 46	193, 610. 55
Reserve for depreciation	360, 273. 81	(a)20, 319. 35 (b)128, 676. 46 (d)88, 235. 29	(c)3, 162. 14	126, 204. 85
Total	4, 020, 885. 29	240, 393. 24	220, 073. 89	4, 000, 365. 94

EXHIBIT B-1.—*Explanation of Items, Changed, Unchanged—Balance Sheet, January 1, 1923*

(a) See Balance Sheet 12/31/21.
(b) See Balance Sheet 12/31/21.
(c) See 1922 Explanation of Changes, item (b).
(d) See 1922 Explanation of Changes, item (a).

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U. S. Ferro Alloys Corp. #9

EXHIBIT "C".—*Balance Sheet, January 1, 1924*

	Books	Debit	Credit	Amended
ASSETS				
Cash	$207,816.70			$207,816.70
Notes Receivable	192,640.20			192,640.20
Accounts Receivable	392,797.10			392,797.10
Inventories	441,870.68			441,870.68
Stock, Colonial Chrome	20,000.00			20,000.00
Stock-Unico Co	100.00			100.00
Deferred Charge	9,621.49			9,621.49
Organization Exp	10.80			10.80
Building, Equipment & Patents	3,158,746.14		(a) $20,319.35	3,138,426.79
Total	$4,423,602.81		20,319.35	$4,403,283.46
LIABILITIES				
Notes Payable	250,000.00			250,000.00
Accounts Payable	498,255.41			498,255.41
Accrued Taxes, Commission	9,301.58			9,301.58
Reserve for Bad Debts	3,887.31			3,887.31
Reserve for Depreciation	502,944.25	(a) $20,319.35 (b) 216,911.75 (c) 88,235.29	(d) 6,324.28	183,802.14
Preferred Stock	40,000.00			40,000.00
Common Stock	3,000,000.00			3,000,000.00
Surplus	119,214.26	(d) 6,324.28	(b) 216,911.75 (c) 88,235.29	418,037.02
Total	$4,423,602.81			4,403,283.46

EXHIBIT C-1.—*Explanation of Items, Changed, Unchanged.—Balance Sheet, January 1, 1924*

(a) See balance sheet 12/31/21 explanation of changes.
(b) Accumulated depreciation on patents disallowed.
(c) Depreciation on patents 1923 disallowed.
(d) Additional depreciation allowed 1922 and 1923. See explanation of changes 1922 and 1923 income.

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U. S. Ferro Alloys Corp. #10

EXHIBIT "D".—*Balance sheet, Dec. 20, 1924*

	Books	Debit	Credit	Amended
ASSETS				
Cash	$96,089.32			$96,089.32
Accounts Receivable	264,345.39			264,345.39
Inventories	571,527.70			571,527.70
Claims	2,714.93			2,714.93
Colonial Chrome	192,640.20			192,640.20
Stock, Colonial Chrome	20,000.00			20,000.00
Deferred Items	10,558.34			10,558.34
Properties, Patent & Process	3,165,146.96		(a) $20,319.35	3,144,827.61
Total	$4,323,033.84			$4,302,714.49
LIABILITIES				
Accounts Payable	$268,480.97			268,480.97
Colonial Chrome, Ltd	2,900.97			2,900.97
Vanadium Corp	388,815.50			388,815.50
Reserve for Depreciation	635,908.36	(a) $20,319.35 (b) 305,147.04 (c) 85,784.31	(d) 9,486.42	234,144.08
Reserve, Federal Income Tax	1,150.00			1,150.00
Capital Stock	3,000,000.00			3,000,000.00
Surplus	75,778.04	(d) 9,486.42	(b) 305,147.04 (c) 85,784.31	457,222.97
Total	$4,423,033.84			$4,302,714.49

EXHIBIT "D-1".—*Explanation of Items, Changed, Unchanged.—Balance sheet, December 20, 1924*

(a) See Balance Sheet December 31, 1921.
(b) Accumulated depreciation on patents disallowed up to December 31, 1923.
(c) Depreciation on patents 1924 disallowed.
(d) Additional depreciation allowed 1922, 1923, 1924. See explanation of changes 1922 income.

H.11

170 U. S. Ferro Alloys Corp. #11

EXHIBIT "E".—*Reconciliation of amended surplus with taxable net income, year ended 12/31/22*

		Per Books		Amended
Surplus 1/1/22		$(31,064.49)		$47,921.08
Add:				
Income per books & Taxable Income	$60,616.37		200,426.47	145,669.87
Adj. Water Power	1,200.00			
		61,816.37		
Deduct:				
Adj. 1921-22 Comm		870.94		
Surplus 12/31/22		$(20,139.06)		$193,610.55

H12

U. S. Ferro Alloys Corp. #12

EXHIBIT "F".—*Analysis of surplus and reconciliation of amended surplus with amended taxable net income, year ended 12/31/23*

		Per Books		Amended
Surplus 12/31/22		$(20,139.06)		$193,610.55
Additions:				
Income per books and taxable net income	$141,453.32	141,453.32	261,318.13	261,318.13
Deduct:				
Adj. Petinot Salary		2,100.00		
Contributions			891.56	
Unallowable deduction			36,000.00	36,891.56
Royalty and Patent				
Surplus 12/31/23		$119,214.26		$418,037.02

H13

171 U. S. Ferro Alloys Corp. #13

EXHIBIT "G."—*Analysis of surplus and reconciliation of amended surplus with amended taxable net income, period ended 12/20/24*

		Per Books		Amended
Surplus 12/31/23		$119,214.26		$418,037.02
Additions:				
Income per books and taxable income	$(27,557.41)			84,302.39
Release Liability, N. Petinot	11,250.00			
		(16,307.41)		
Additional Depreciation allowed			12,012.37	12,012.37
Deductions:				
Contributions	8,233.34			
1923 Tax	14,300.68			
Additional Tax	3,444.79			
Res. for Taxes	1,150.00			
		27,128.81		27,128.81
Surplus 12/20/24		$75,778.04		$457,222.97

H14

EXHIBIT "H".—*United States Ferro Alloys Corporation, schedule of depreciation—Depreciation was taken on monthly balances*

[NOTE.—Three shifts per day, or 24 hours continuous operation, includes additional depreciation on property sold or retired, less residual value].

Property	Cost, December 31, 1921	Additions, 1922	Cost, December 31, 1922	Rate	Depreciation charged	Additions, 1923	Cost, December 31, 1923	Rate	Depreciation charged
Buildings—Furnace Room	$239,571.14	$435.61	$240,006.75	3	$7,190.67	$468.49	$240,475.24	3	$7,506.97
" Machine Shop	7,390.82		7,390.82	2	147.82		7,390.82	2	147.81
" Storeroom C	7,058.52		7,058.52	5	352.93		7,058.52	5	352.93
" Cooling Plant	4,548.34		4,548.34	5	227.42		4,548.34	5	227.42
" Office and Laboratory	15,078.30		15,078.30	2	301.57		15,078.30	2	301.56
" Garage	4,276.00		4,276.00	3	128.28		4,276.00	3	128.26
" Scale House	166.63		166.63	5	8.33		166.63	5	8.33
" Hopper	2,585.96		2,585.96	5	129.30		2,585.96	5	129.30
" Storeroom D	11.02		11.02	2	.22		11.02	2	.22
" Storeroom E	2,815.13		2,815.13	2	56.30	109.43	2,924.56	5	58.95
" Storeroom Lime		443.91	443.91	5	5.54		443.91	5	22.20
" Storeroom Silica Sand		1,384.43	1,384.43	5	12.27		1,384.43	5	69.23
Dwellings	26,117.09		26,117.09	3	783.51		26,117.09	3	783.51
Land and Building Appurtenances:									
Sewerage system	14,906.91		14,906.91	5	745.35		14,906.91	5	745.35
Fire Hydrants & Water Supply	579.96		579.96	5	28.99		579.96	5	29.00
Yard Paving & Concrete Ore Apron	11,389.52	1,568.21	12,957.73	10	1,172.83	(1,750.00)	11,207.73	10	1,265.77
Fence	4,482.09		4,482.09	5	224.10		4,482.09	5	224.10
Gasoline Storage	88.35		88.35	5	4.42		88.35	5	4.42
Power Transmission	3,223.88	1,112.21	4,336.09	5	171.20	1,708.52	6,044.61	5	270.41
Heating System	4,745.01		4,745.01	5	237.25		4,745.01	5	237.25
Road Improvements	14.43		14.43	10	1.44		14.43	10	1.44
Land Improvements	150.00		150.00	5	7.50		150.00	5	7.50
Equipment, Production Department:									
Belt Conveyor & Shuttle	3,987.44	18.93	4,006.37	20	790.07		4,006.37	20	801.24
Bridge Cranes	21,512.87		21,512.87	20	4,302.57		21,512.87	20	4,302.57
Conveyors, Skips, etc	1,001.14		1,001.14	25	250.29	(560.24)	440.90	25	401.78
Furnaces	80,158.91	7,004.95	87,163.86	15	9,609.16	514.62	87,678.48	15	17,348.56
Cooling Plant Equipment	1,850.00	529.61	2,689.61	15	339.44	377.80	3,067.41	15	436.48
Transformers—Electric Equipment	100,784.31	1,584.51	102,368.82	15	15,191.31	1,342.13	103,710.95	15	15,495.87
Crushers	2,192.80	3,371.04	5,563.84	20	859.78		5,563.84	20	1,112.77
Mixers	2,844.49	376.51	3,221.00	20	576.50		3,221.00	20	644.20
Scales	1,664.29	343.78	2,008.07	20	342.19	383.54	2,391.61	20	442.73
Crushing & Sizing Plant		3,379.53	3,379.53	20	75.78	367.37	3,746.90	20	668.66

EXHIBIT "H".—*United States Ferro Alloys Corporation, schedule of depreciation—Depreciation was taken on monthly balances*—Continued

Property	Cost, December 31, 1921	Additions, 1922	Cost, December 31, 1922	Rate	Depreciation charged	Additions, 1923	Cost, December 31, 1923	Rate	Depreciation charged
Equipment, Maintenance Department:									
Machinery	$2,556.03		$2,556.03	10	$255.60		$2,556.03	10	$255.60
Shafting & Belting	272.63		272.63	8	21.81		272.63	8	21.81
Tools	1,400.96		1,400.96	25	350.24		400.36	25	350.24
Equipment, Receiving, Shipping & Stock:									
Track Scales	8,801.92		8,801.92	5	440.10		8,801.92	5	440.10
Locomotive Crane	5,000.00	$5,740.75	10,740.75	20	1,570.06		10,740.75	20	2,148.15
Locomotive & Cars	16,028.68	835.00	16,863.68	12½	2,044.07	$2,229.68	19,093.36	12½	3,568.05
Railroad Track	30,123.44	2,881.67	32,005.11	6¼	2,018.98	1,427.15	33,432.26	6¼	2,198.74
Motor Truck & Garage Equipment	3,206.13		3,206.13	25	801.57		3,206.13	25	801.58
Shipping Department Tools	11.84	1,050.30	1,061.84	25	22.62	21.60	1,083.44	25	266.83
Cranes & Buckets	19,498.35	8.03	19,506.38	10	1,950.66		19,506.38	10	1,950.64
Pulverising Plant		78.94	78.94			6,737.30	6,816.24	20	718.37
Other Equipment:									
Laboratory	1,554.23	120.40	1,674.63	5	78.92		1,674.63	5	83.73
Experimental	325.96		325.96	25	81.49		325.96	25	81.49
Dwellings	47.20		47.20	20	9.44		47.20	20	9.44
Plant Office (Niagara)	2,415.90	44.20	2,460.10	8	196.11	304.15	2,764.25	8	208.31
Automobile	1,100.00	550.00	1,650.00	25	275.00		1,650.00	25	412.50
Club House	26.03		26.03	15	3.90		26.03	15	3.90
New York Office Equipment	3,830.08	249.50	4,079.57	8	320.15	46.00	4,125.57	8	328.57
Lewiston Quarry	6,115.06	(1,002.68)	5,112.38	20	1,116.54	291.25	5,403.63	20	2,057.37
Cottage, Black Lake		5,765.85	5,765.85	5	288.29		5,765.85	5	288.29
Patents	1,500,000.00		1,500,000.00	1/17	88,235.29		1,500,000.00	1/17	88,235.29
Totals	$2,156,509.48	$38,185.19	$2,174,694.67		$144,384.06	$14,018.79	$2,188,713.46		$158,882.81

SCHEDULE I. FEDERAL TAX RETURN DECEMBER 1924

Property	Date acquired	Balance, December 31, 1923	Additions in 1924	Balance, December 20, 1924	Depreciation
Buildings, Plant Operation	1919	$286,343.73	$1,553.52	$287,897.25	$5,438.25
Dwellings	"	26,117.09		26,117.09	761.74
Land and Building Appurtenances	"	42,219.09	1,285.14	43,504.23	2,622.01
Equipment—Production Dept	"	205,340.33	(1,418.44)	203,921.89	48,264.50
" Maintenance Dept	"	4,229.62	588.44	4,818.06	360.42
" Receiving	"				
Shipping and Stock Dept	"	102,680.66	2,535.27	105,215.93	10,632.88
Equipment and General Engineering	"	2,000.59		2,000.59	135.90
" Dwellings	"	47.20		47.20	9.19
" Plant Office	"	4,440.28	48.35	4,488.63	621.99
Equipment—Quarry	1920	5,403.63		5,403.63	1,455.46
" New York Office	1919	4,125.57	56.00	4,181.57	325.98
Patents	1920	1,500,000.00		1,500,000.00	85,784.31
Black Lake Cottage		5,795.67			
Totals		$2,188,713.46	$4,648.28	$2,187,896.07	$157,422.63

H15

173 U. S. Ferro Alloys Corp. #15

EXHIBIT "I".—*Schedule of depreciation on cost of additional equipment charged to H. C. Sicard account*

Property	Cost of additions, 12/31/21	Rate	Depreciation 1922	1923	1924
Buildings, Furnace Room	$49,984.06	3%	$1,499.52	$1,499.52	$1,499.52
Buildings, Office and Laboratory	2,425.00	2	48.50	48.50	48.50
Dwellings	1,033.66	3	31.01	31.01	31.01
Land and Building Appurtenances:					
Sewerage System	990.35	5	49.52	49.52	49.52
Fence	4,485.00	5	224.25	224.25	224.25
Heating System	2,060.84	5	103.04	103.04	103.04
Equipment, Production Department:					
Furnaces	3,093.27	15	463.99	463.99	463.99
Transformers and Electrical Equipt	4,809.25	15	721.39	721.39	721.39
Equipment, Maintenance Dept.: Shafting and Belting	122.63	8	9.81	9.81	9.81
Equipment, Receiving, Shipping, and Stock Department: Track Scales	109.29	5	5.46	5.46	5.46
Plant Office Equipment	70.68	8	5.65	5.65	5.65
Totals	$69,184.12	.....	3,162.14	3,162.14	3,162.14

H16

174 U. S. Ferro Alloys Corp. #16

EXHIBIT "J".—*Reconciliation of plant patent account on balance sheet with that on depreciation schedule*

	Dec. 31, 1921	Dec. 31, 1922	Dec. 31, 1923	Dec. 31, 1924
Total assets per depreciation Schedule	$2,136,509.48	$2,174,694.67	$2,188,713.46	$2,187,596.07
Add: Stock issued for no assets Debit made to Plant Account not included in Depreciation Schedule	800,000.00	800,000.00	800,000.00	800,000.00
Additional Assets, Cost of Additional Equipment	69,184.12	69,184.12	69,184.12	69,184.12
Amount Stock issued in excess of actual value	88,467.66	85,592.66	80,529.21	88,047.42
Total Plant Patent Account Per Balance Sheet	$3,094,161.26	$3,129,471.45	$3,138,426.79	$3,144,827.61

H17

175 U. S. Ferro Alloys Corp. #17

EXHIBIT "K."—*Reconciliation of income per books with income per return and with taxable net income, year ended 12/31/22*

Net income per books		$60,616.37
Additions: Adj. power contract	$1,200.00	
Deductions:		
1921 net loss	85,893.33	
Adj. Commission	870.94	
Net income for taxpayer per return		(24,947.90)
Additions:		
1921 net loss	85,893.33	
Commission	870.94	
1922 depreciation patents	88,235.29	
Deductions:		
1922 additional depreciation allowed	3,162.14	
1200 water power adj	1,200.00	
Net income as corrected		145,689.52

H18

176 U. S. Ferro Alloys Corp. #18

EXHIBIT "L."—*Reconciliation of income per books with income per return and with taxable net income, year ended December 31, 1923*

Net income per books		$141,453.32
Additions	None.	
Reductions:		
1922 Net Loss	$24,947.90	
Adj. Petinot salary	2,100.00	
Income per taxpayer's tax return		114,405.42
Additions:		
1923 depreciation patents	88,235.29	
Royalty and patent license	36,000.00	
1932 loss	24,947.90	
Contributions	891.66	
Deductions: Additional depreciation	3,162.14	
Net income as corrected		261,318.13

H19

U. S. Ferro Alloys Corp. #19

EXHIBIT "M."—*Reconciliation of income per books with income per return and with taxable net income, period ended December 20, 1924*

Net income per books		$(27,557.41)
Additions	None.	
Reduction: Depreciation and repairs		12,012.37
Income per taxpayer's return		(39,569.78)
Additions:		
Depreciation patents	$85,784.31	
Release liability, N. Petinot	11,250.00	
Deductions: Additional depreciation allowed	3,162.14	
Net income as corrected		54,302.39

H20

177 Before United States Board of Tax Appeals

[Title omitted.]

Præcipe for transcript of record

Filed May 18, 1934

To the clerk of the United States Board of Tax Appeals:

Please prepare a consolidated transcript of record in the above-entitled proceedings and transmit the same to the Clerk of the United States Circuit Court of Appeals of the Second Circuit and include in said transcript certified copies of the following documents:

1. Docket entries of the proceedings before the Board in Dockets No. 44061, 47451, and 47973.

2. Pleadings before the Board.

(a) Petition including annexed copy of deficiency letter, in all three appeals.

(b) Answer in all three appeals.

(c) Motion for consolidation of Dockets No. 44061, 47451, and 47973, and the order granting said motion.

3. Findings of fact, opinion and decision of the Board promulgated August 11, 1933.

4. Order entered August 23, 1933, directing that the report of Division 9 promulgated August 11, 1933, be reviewed by the Board.

178 5. Opinion dated October 17, 1933, written as the result of order entered August 23, 1933.

6. Petitions for review in Dockets No. 44061, 47451, and 47973, together with proof of service of notice of filing petitions for review and of service of a copy of petition for review in each appeal.

7. Statement of evidence as settled and allowed, together with all of the Exhibits which were received in evidence by the Board.

8. This praecipe.

We hereby agree that the foregoing præcipe is correct; that the records, documents, papers, and proceedings therein set forth are sufficient and a complete record in this cause on appeal and we hereby adopt the foregoing as a list designated by each of the parties to this cause to be a complete record and we hereby waive the issuance and service of notice upon any party hereto and agree that said præcipe shall be obeyed by and acted upon by the clerk in the same manner as if said præcipe had been regularly filed and a copy thereof served upon each party hereto.

(Signed) JAMES P. QUIGLEY,
JAMES P. QUIGLEY,
Attorney of record for Parker Sloane and Hugh C. Sicard.

(Signed) JOHN F. McCABE,
JOHN F. McCABE,
Attorney of record for John J. Watts.

ROBERT H. JACKSON,
General Counsel, Bureau of Internal Revenue.

179 [Clerk's certificate to foregoing transcript omitted in printing.]

180 In United States Circuit Court of Appeals for the Second Circuit

Nos. 91–93. October term, 1934

Argued January 9, 1935. Decided March 4, 1935

JOHN J. WATTS, petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, respondent

HUGH C. SICARD, petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, respondent

PARKER SLOANE, petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, respondent

Appeal from the Board of Tax Appeals

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges

Petitions to review decisions of the Board of Tax Appeals by three taxpayers against whom like deficiencies in income taxes for 1924 were sustained on identical facts and for the same reasons. Reversed.

James P. Quigley, of Olean, N. Y., John F. McCabe, of New York City, and Robert J. Helberle, for petitioners.

J. S. Y. Ivins, of Washington, D. C. (Brewster, Ivins & Phillips, of Washington, D. C., of counsel), amicus curiæ.

Edward H. Green and John A. Woodbridge, both of New York City (Sullivan & Cromwell and Samuel Seabury, all of New York City, of counsel), amicus curiæ.

Opinion

CHASE, Circuit Judge.

As the petitions all raise the same questions and were argued together, one opinion will be sufficient to dispose of them.

In December 1924, the three petitioners, owning all of the stock of United States Ferro Alloys Corporation, a corporation to be hereafter designated merely as Alloys, exchanged all of their stock for stock in the Vanadium Corporation of America, a corporation which will herein be called Vanadium, and for mortgage bonds of Alloys which were guaranteed both as to the payment of principal

and of interest by Vanadium. The contract was made in behalf of all of the petitioners by one of them and provided that an agreed number of Vanadium shares should be placed in escrow until January 1, 1926, from which there should be transferred to each of the petitioners such an amount of the stock, whose value for the purposes of the exchange was agreed to be $30 per share, as should be determined on the basis of the demonstrated earning power of Alloys in
181 1925. The contract was fully performed, and, when performed, the petitioners had, in place of all the stock of Alloys, 32,103 shares of Vanadium and bonds of Alloys to the amount of $1,161,194.50. Though the contract also included payments by Vanadium in cash to creditors of Alloys, the parties stipulated before the Board that the petitioners thereby received no taxable income. The business of Alloys continued to be conducted by that corporation until it was dissolved in 1928.

The position the respondent takes is that the petitioners sold their stock in Alloys and are taxable upon gains then realized as by a sale of stock at a profit. The petitioners contend that the transaction was tax free under section 203 of the Revenue Act of 1924 (26 U. S. C. A., § 934), because they received only stock and bonds of corporations which were parties to a reorganization within the meaning of that statute.

The controlling facts may be stated in one sentence. The petitioners exchanged all of the stock of Alloys solely for stock in Vanadium and bonds of Alloys.

Section 203 (b) (2) of the Revenue Act of 1924 (26 U. S. C. A., § 934 (b) (2)), provided that: "No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization."

And section 203 (h) of the same statute provided, so far as here applicable, that: "(1) The term 'reorganization' means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation. * * *)" 26 U. S. C. A., § 934 (h) (1) (A).

Article 1574 of T. R. 65, insofar as pertinent to the present problem, provided that under the law above noted "* * * no gain or loss shall be recognized to the shareholders from the exchange of stock made in connection with the reorganization. * * * If two or more corporations reorganize, for example, by either * * * (3) the sale of the stock of B to A, or * * * (6) the acquisition by A of a majority of the total number of shares of all other classes of stock of B. * * *"

Since the transaction here involved is one that verbally falls within the concept of "reorganization" as shown by the regulation—as all of the stock of Alloys went to Vanadium, either subdivision (3) or (6) covers the transaction—the real issue is simply

whether the regulation has unlawfully broadened the statutory definition of "reorganization." The plan of reorganization was the contract made and performed.

In the above statute it will be seen that reorganization was defined to be a merger or consolidation, with those terms somewhat expanded by matter in parenthesis "so as to include some things which partake of the nature of a merger or consolidation but are beyond the ordinary and commonly accepted meaning of those words—so as to embrace circumstances difficult to delimit but which in strictness cannot be designated as either merger or consolidation." Pinellas Ice & Cold Storage Co. v. Commissioner, 287 U. S. 462, 470, 53 S. Ct. 257, 260, 77 L. Ed. 428. In Cortland Specialty Co. v. Commissioner, 60 F. (2d) 937, we had before us the taxable effect under the similar section 203 (h) (1) of the Revenue Act of 1926, 26 U. S. C. A., § 934 (h) (1) of a sale of the assets of a corporation for cash and short-term notes, and held that the gain from the transaction was not tax free. In that connection we discussed merger and consolidation generally in their relation to a reorganization within the meaning of the statute, but the facts there did not present the issue now before us. And in C. H. Mead Coal Co. v. Commissioner (C. C. A.) 72 F. (2d) 22, while the precise question here was not involved, the necessity for giving a liberal scope to the words "merger" and "consolidation" as used in the statute, which, as already noticed, was in respects now essential like the statute controlling here, was recognized.

We think the legislative history of the statute requires its interpretation in a way which shows that the Board in this instance was in error in sustaining the deficiencies. It was divided in opinion, with the majority taking the view that there was no "reorganization" while there was no dissolution of Alloys.

In the Revenue Act of 1918, Congress for the first time
182 dealt with the effect of reorganization upon taxation, and provided in section 202 (b), 40 Stat. 1060 that "* * * when in connection with the reorganization, merger, or consolidation of a corporation a person receives in place of stock or securities owned by him new stock or securities of no greater aggregate par or face value, no gain or loss shall be deemed to occur from the exchange. * * *"

The terms "reorganization", "merger", and "consolidation" were left without especial definition for the purposes of the statute, and the Treasury Department promulgated Regulations 45, which required in such a situation as that before us the dissolution of the corporation whose stock was acquired by another corporation as a condition precedent to sustaining the claim of freedom from taxation which the petitioners make. In 1921, however, Congress saw fit to change the statute and then included in section 202 (c) (2) of the 1921 act, 42 Stat. 230, the same statutory definition of reorganization which was carried into the 1924 act and is effective here. The term "reorganization" was the subject of some controversy between

the House and the Senate, but this was resolved as is shown by the report of the conference committee, which stated:

"The Senate amendment adds to this definition the case where one corporation acquires at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation; * * * and the House recedes." Conf. Rep. No. 486, 67th Congress, 1st session, pp. 17 and 18.

After the 1921 act went into effect, the Treasury Department promulgated regulations which differed from those under the 1918 act. The language found both in subdivision (3) and in (6) of T. R. 65, art. 1574, above quoted, was used to define a reorganization. T. R. 62, art. 1566 (b). It will thus be seen that the regulations no longer required a dissolution of the corporation whose stock was acquired in order to entitle persons in the situation of these petitioners to make such an exchange on a tax-free basis.

In 1924 Congress enacted the statute under which these deficiencies were assessed, and then had under consideration whether article 1566 of T. R. 62, in providing that in the case of a reorganization no gain or loss should be recognized to the corporations as well as to the stockholders, had, in putting the corporations in a reorganization on the same basis with stockholders, gone beyond the scope of the 1921 act. It was proposed to resolve this difficulty by changing the statute so as to eliminate all doubt about the validity of the regulations in this respect. The Senate committee reported on the subject that:

"There is no corresponding provision of the existing law, although this paragraph embodies the construction placed by the Treasury Department upon the existing law. The present ruling of the Treasury Department is of doubtful legality and a statutory provision is most necessary." Sen. Rep. No. 398, 68th Congress, 1st session, pp. 14 and 15.

This proposed change was made. Nevertheless, the definition of reorganization as it had been in section 202 (c) of the 1921 act was reenacted without material change in section 203 (h) (1) in the 1924 act, 26 U. S. C. A., § 934 (h) (1). Under well-established principles of construction, this reenactment of the definition of reorganization after it had been interpreted by regulation is strong evidence that Congress intended section 203 (h) (1) to include within the meaning of the word as there defined such an exchange of stock for stock and bonds as these petitioners made. Zellerbach Paper Co. v. Helvering, 293 U. S. 172, 55 S. Ct. 127, 79 L. Ed. —; United States v. Dakota-Montana Oil Co., 288 U. S. 459, 53 S. Ct. 435, 77 L. Ed. 893; Norwegian Nitrogen Products Co v. United States, 288 U. S. 294, 53 S. Ct. 350, 77 L. Ed. 796; Costanzo v. Tillinghast, 287 U. S. 341, 53 S. Ct. 152, 77 L. Ed. 350; McCaughn v. Hershey Chocolate Co., 283 U. S. 488, 51 S. Ct. 510, 75 L. Ed. 1183; Shearman v. Commissioner (C. C. A.) 66 F. (2d) 256. In our opinion, therefore, subdivisions (3) and (6) of article 1574 of T. R. 65 are valid, and either makes it impossible to affirm the deci-

sion of the Board of Tax Appeals sustaining the deficiencies determined in the case of each of these petitioners. Having had the opportunity, it is to be presumed that, if Congress had intended, contrary to the regulation in force, to have the gain from such an ex-
183 change as this be tax free only when there was a dissolution of one of the corporations or some other change in the corporate structure such as would commonly take place in a merger or consolidation, strictly speaking, it would have said so. The fact that it changed a related part of the statute to remove any doubt as to the validity of a regulation and at the same time reenacted the part which had been construed by the regulation which governs here shows an adoption of such construction. National Lead Co. v. United States, 252 U. S. 140, 40 S. Ct. 237, 64 L. Ed. 496; United States v. Cerecedo Hermanos Y Compania, 209 U. S. 337, 28 S. Ct. 532, 52 L. Ed. 821; Francisco Sugar Co. v. Commissioner (C. C. A.) 47 F. (2d) 555.

Decisions reversed.

184 In United States Circuit Court of Appeals, Second Circuit

JOHN J. WATTS, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decree filed March 11, 1935

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be, and it hereby is, reversed.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk.*

185 [File endorsement omitted.]

186 In United States Circuit Court of Appeals, Second Circuit

HUGH C. SICARD, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decree filed March 11, 1935

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be, and it hereby is, reversed.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk.*

187 [File endorsement omitted.]

188 In United States Circuit Court of Appeals, Second Circuit

PARKER SLOANE, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decree filed March 11, 1935

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be, and it hereby is, reversed.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk.*

189 [File endorsement omitted.]

190 [File endorsement omitted.]

191 In United States Circuit Court of Appeals for the Second Circuit

[Titles omitted.]

No. 91

No. 92

No. 93

Petition for rehearing filed March 18, 1935

192 Comes now the petitioner, the Commissioner of Internal Revenue, by his attorneys, and petitions this honorable court for a rehearing in the above-entitled cause, the opinion in

which was filed on March 4, 1935. In support of this petition, respondent assigns the following reason:

The decision of this court that the transaction under consideration was a reorganization will have the effect of eliminating the tax. This result would be inconsistent with this court's decision in Worcester Salt Co. v. Commissioner, decided February 18, 1935. In the latter case this court held that bonds are merely an evidence of indebtedness similar to the notes in the case of Pinellas Ice Co. v. Commissioner, 287 U. S. 462. It necessarily follows from this conclusion that bonds are not "securities" within the meaning of the reorganization provision of the revenue act. They constitute "other property" and are subject to taxation. In the instant cases the taxpayer exchanged stock of Alloys solely for stock in Vanadium and bonds of Alloys. Therefore, the transaction comes within the terms of section 203 (d) (1) of the Revenue Act of 1924, which provides that if an exchange would be within the provisions of paragraph (2) of subdivision (b) if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property, then the gain to the recipient should be recognized, but in an amount not in excess of the fair market value of such other property. The principal amount of the bonds of
193 Alloys aggregated $1,161,194.50. Under the terms of section 203 (d) (1), the gain should be recognized in that amount.

Respondent respectfully petitions this honorable court for a rehearing in order that it may be given the benefit of this court's decision in the Worcester Salt case, which was only recently available.

FRANK J. WIDEMAN,
Assistant Attorney General.
J. LOUIS MONARCH,
MORTON K. ROTHSCHILD,
Special Assistants to the Attorney General.

MARCH 1935.

CERTIFICATE OF COUNSEL

The undersigned, counsel for petitioner, the Commissioner of Internal Revenue, hereby certifies that in his judgment the foregoing Petition is well founded and is not interposed for delay.

FRANK J. WIDEMAN,
Assistant Attorney General.

194 In United States Circuit Court of Appeals for the Second Circuit

[Titles omitted.]

Opinion, per curiam, petitions for rehearing denied

Filed March 27, 1935

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges

FRANK J. WIDEMAN, ESQ.,
Asst. Attorney General.
J. LOUIS MONARCH, ESQ.,
MORTON K. ROTHSCHILD, ESQ.,
Special Assistants to the Attorney General

Circuit Judges.

195 In United States Circuit Court of Appeals, Second Circuit

JOHN J. WATTS, PETITIONER

VS.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

(And two other cases)

Order denying petition for rehearing.

Filed March 27, 1935

A petition for a rehearing having been filed herein by counsel for the respondent;

Upon consideration thereof it is

Ordered that said petition be, and hereby is, denied.

WM. PARKIN, *Clerk.*

196 [File endorsement omitted.]

197 [Clerk's certificate to foregoing transcript omitted in printing.]

UNITED STATES OF AMERICA,

198 Supreme Court of the United States

No. 184—October term, 1935

Order allowing certiorari

Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the

case is assigned for argument immediately following Nos. 175 and 176.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

199 Supreme Court of the United States

No. 185—October term, 1935

Order allowing certiorari

Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following Nos. 175 and 176.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

200 Supreme Court of the United States

No. 186—October term, 1935

Order allowing certiorari

Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following Nos. 175 and 176.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File Nos. 39738, 39739, 39740. U. S. Circuit Court of Appeals, Second Circuit. Term No. 184. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. John J. Watts. Term No. 185. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. Hugh C. Sicard. Term No 186. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. Parker Sloane. Petition for writs of certiorari and exhibit thereto. Filed June 27, 1935. Term Nos. 184 O. T. 1935, 185 O. T. 1935, 186 O. T. 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1939